

**Commission d'enquête
sur les actions des
responsables canadiens
relativement à Maher Arar**



**Commission of Inquiry into
the Actions of Canadian
Officials in Relation to
Maher Arar**

Audience publique

Public Hearing

Commissaire

L'Honorable juge /
The Honourable Justice
Dennis R. O'Connor

Commissioner

Tenue à:

Salon Algonquin
Ancien hôtel de ville
111, Promenade Sussex
Ottawa (Ontario)

le lundi 16 mai 2005

Held at:

Algonquin Room
Old City Hall
111 Sussex Drive
Ottawa, Ontario

Monday, May 16, 2005

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Mr. Joe Arvay	The British Columbia Civil Liberties Association
Mr. Kevin Woodall	The International Commission for Jurists, The Redress Trust, The Association for the Prevention of Torture, World Organization Against Torture

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1 Ottawa, Ontario / Ottawa (Ontario)

2 --- Upon commencing on Monday, May 16, 2005

3 at 1:00 p.m. / L'audience débute le lundi

4 16 mai 2005 à 13 h 00

5 THE REGISTRAR: Please be seated.

6 Veuillez-vous asseoir.

7 THE COMMISSIONER: Good afternoon.

8 MS McISAAC: Mr. Commissioner,
9 before we start, if I may, I have just spoken to
10 my friend, and at the hearing last week I had
11 undertaken to explain the sourcing of the
12 references at page 16 of Inspector Garvie's report
13 to the material that Mr. Arar had received from
14 the Americans while he was incarcerated.

15 The Garvie report is Exhibit P-19,
16 and at page 16 Inspector Garvie notes that
17 Mr. Arar received the document outlining the
18 reasons for his inadmissibility to the United
19 States.

20 He then cites two source
21 documents: Volume 3, tab 32, and Volume 5, tab
22 28.

23 Just to explain, the Garvie report
24 had a number of, as you can expect -- five, I
25 think it was -- volumes of source documents that

1 Inspector Garvie referred to for the preparation
2 of his report. Those have all been provided to
3 the Commission.

4 My recollection -- and I stand to
5 be corrected by Commission counsel -- is that most
6 of those documents are either in the RCMP
7 chronology or time line document and/or in the
8 collection of RCMP hearing documents that the
9 Commission identified. So the decision was made
10 not to reproduce them again as part of the Garvie
11 report because that would in some cases be the
12 third copy of the same document.

13 However, I can advise that Volume
14 5, tab 28, is in fact the series of questions that
15 were provided to Ms Girvan through her counsel at
16 the time from the Department of Foreign Affairs.

17 If we go to page 62 of the Garvie
18 report, you will see that Inspector Garvie
19 outlines that on the 22nd of December, 2003 -- he
20 met with Donna Blois, proposed a number of
21 questions to be put to Ms Girvan, and on page 63
22 you can see that Ms Girvan says that when she met
23 with Mr. Arar on October 3, he showed her the
24 document listing the allegations made against him.

25 Just to confirm, if you turn over

1 to the next page, which is page 64, you will see
2 that the source document is the same Volume 5, tab
3 28, which is the series of questions and answers.

4 The other document that he
5 referred to, the one that is described as Volume
6 3, tab 32, is in fact the time line or chronology
7 of events that Mr. Arar himself has posted both on
8 his website, and at the time it looks like this
9 particular one came from the website of Amnesty
10 International.

11 So those are the two sources that
12 Inspector Garvie used, and as you will recall, he
13 was doing this all after the fact, indeed after
14 Mr. Arar had returned to Canada.

15 THE COMMISSIONER: Thank you for
16 that, Ms. McIsaac.

17 Ms Edwardh?

18 MS EDWARDH: I thank my friend for
19 that clarification.

20 PREVIOUSLY SWORN: MAUREEN GIRVAN

21 EXAMINATION (Continued)

22 MS EDWARDH: Good afternoon,
23 Ms Girvan.

24 MS GIRVAN: Good afternoon.

25 MS McISAAC: I would like to pick

1 up on a few themes and just clarify some of your
2 answers.

3 I had asked you a little bit about
4 your familiarity with the regime in Syria, and
5 you, I believe, indicated in your testimony that
6 you had travelled to Damascus. Have you lived in
7 Damascus for any period of time?

8 MS GIRVAN: I lived in Damascus.
9 I think you asked me if I had been to Damascus,
10 that's correct.

11 MS EDWARDH: How many years did
12 you live in Damascus?

13 MS GIRVAN: Nearly three, I
14 believe.

15 MS EDWARDH: What years would that
16 have been?

17 MS GIRVAN: I'm not very good on
18 exact years, but it would be around the Gulf War
19 because I was evacuated -- in fact, for a good
20 part of that middle year I was evacuated from
21 Syria. I suppose I was there more two and a bit,
22 but it would be around 1991, maybe.

23 MS EDWARDH: You placed the
24 events. If need be, we can have reference to the
25 Gulf War.

1 As well, there was some discussion
2 of Mr. X and Mr. Y, and I provided to all counsel
3 a document, which is a pleading filed by the
4 Centre for Constitutional Rights in respect of a
5 number of persons whom -- two of which, I believe,
6 are "X" and "Y". But I don't want to ask you
7 questions about matters you are not familiar with.

8 Did I understand your answer to be
9 that it was really Miss Collins or perhaps
10 Mr. Pardy who was more familiar with their
11 situation than yourself?

12 MS GIRVAN: I don't remember what
13 I answered exactly. You were asking who was more
14 familiar with the cases?

15 MS EDWARDH: Yes.

16 MS GIRVAN: I only became the
17 consul in April of that year, so I would think
18 that, yes, the department would be better able to
19 answer questions on particularly the first one,
20 and I had some role of visits thereafter.

21 MS EDWARDH: So you are --

22 MS GIRVAN: I think they would be
23 better able. I'm not very -- I don't remember all
24 the details.

25 MS EDWARDH: So as consul then,

1 you would have taken over your functions in April
2 2002.

3 MS GIRVAN: Correct. Before --

4 MS EDWARDH: And by April 2002,
5 much of the matters that relate to "X" and "Y"
6 really had been dealt with over the year --

7 MS GIRVAN: Yes.

8 MS EDWARDH: -- from September
9 after 9/11, right through April?

10 MS GIRVAN: Yes. I should just
11 mention I was tasked to visit several times during
12 that period.

13 MS EDWARDH: Yes. And that's
14 really the scope of --

15 MS GIRVAN: From December to
16 March.

17 MS EDWARDH: But that's really the
18 scope of your involvement, those few visits?

19 MS GIRVAN: Mm-hmm.

20 MS EDWARDH: All right. We will
21 deal with those issues and perhaps with others.
22 Thank you.

23 I had asked you during the course
24 of my cross-examination whether you were aware of
25 any contact made between yourself or others in the

1 chain of command, as you knew them to be, with any
2 government entity between the time you met
3 Mr. Arar or the day before you met Mr. Arar, on
4 October 3rd?

5 So from October 2nd until his
6 departure, were you aware of any -- and everyone
7 looked at CAMANT notes and we didn't really have a
8 full answer to that. I've looked too, and you, I
9 think, tentatively said that you weren't
10 specifically aware, but I did find one reference.

11 MS GIRVAN: Mm-hmm.

12 MS EDWARDH: And I wanted to draw
13 it to your attention. It's in tab 195. That's
14 Volume 2. And this appears to be a chronology.

15 Have you seen this document
16 before, Ms Girvan?

17 MS GIRVAN: It doesn't look
18 familiar to me. You know, I've seen several
19 chronologies, but this layout doesn't look
20 familiar to me.

21 MS EDWARDH: It does appear on its
22 face to be a description of a chronology belonging
23 to the Department of Foreign Affairs and
24 International Trade in respect of Mr. Arar.

25 Is that fair?

1 MS GIRVAN: Yes.

2 MS EDWARDH: And if you turn to
3 page 2 of this document, and it's page 2 of 15,
4 under the reference "2 Oct 2002" -- do you see
5 that?

6 MS GIRVAN: 2 October 2002, yes.

7 MS EDWARDH: And this would have
8 been the day that you had some conversation with
9 that senior official with INS who told you this
10 was a very significant matter and the Ambassador
11 should call the Department of Justice; correct?

12 MS GIRVAN: This was where I spoke
13 to the supervisor, yes.

14 MS EDWARDH: If we jump down,
15 there's a third point "Washington Embassy". And
16 that is not you, of course. That is the Canadian
17 embassy in Washington?

18 MS GIRVAN: Mm-hmm.

19 MS EDWARDH: "... recommends
20 informal soundings at US
21 Department of Justice"

22 Do you see that?

23 MS GIRVAN: Yes, I do.

24 MS EDWARDH: Also, there is a
25 reference in the next column just beside that. It

1 says "Document(?)".

2 MS GIRVAN: Mm-hmm.

3 MS EDWARDH: Then there is a
4 number, which is a 3, and "no document"?

5 MS GIRVAN: Mm-hmm.

6 MS EDWARDH: Now, I could not find
7 any other reference to an informal inquiry to the
8 U.S. Department of Justice other than this or any
9 reference to any other communication with the
10 Government of the United States.

11 Are you aware, Ms Girvan, whether
12 anyone indeed took those steps and made informal
13 inquiries of the U.S. Department of Justice on
14 October 2nd?

15 MS GIRVAN: No, I'm not sure. I
16 don't know.

17 MS EDWARDH: And, of course, you
18 have read the CAMANT notes. Certainly there
19 doesn't appear to be any indication in those notes
20 or information passed back to you that such a
21 course of action was going to be pursued?

22 MS GIRVAN: Not as far as I
23 remember, though I don't believe they entered very
24 much in CAMANT, the consul. I do remember a
25 reference to possibility of informal soundings,

1 but I don't remember anything after that.

2 MS EDWARDH: Well, certainly
3 there's no document that we have that indicates
4 anyone took such a step with the Department of
5 Justice.

6 MS GIRVAN: Mm-hmm.

7 MS ROUSSEL: If you will forgive
8 me, if we go to tab 697, there is a reference.

9 THE COMMISSIONER: What volume is
10 that?

11 MS ROUSSEL: Volume 8 of 9, tab
12 697.

13 If we look at the bottom, we have
14 an e-mail from Ms Girvan to Dave Dyet, and in the
15 second paragraph, there's reference to that.

16 MR. DAVID: I believe,
17 Mr. Commissioner, the second paragraph refers to
18 contact with the State Department and not with the
19 Department of Justice, the DOJ.

20 MS EDWARDH: Perhaps we will read
21 it so it's absolutely clear.

22 Turning to the second paragraph --
23 and of course this is sent November 7th, 2003, not
24 the 2nd of October.

25 But it says:

1 "Also, and perhaps important.
2 I earlier told someone that I
3 did not know if we had been
4 in touch with State
5 Department when Arar went
6 missing. In fact, Helene
7 Bouchard reminded me that ...
8 was with us all day on the
9 9th - and we consulted him at
10 that time. He said that he
11 had no information and that
12 only immigration would have
13 information. Therefore we
14 are being directed by all
15 American officials to ..."

16 MR. DAVID: Ms Edwardh, if I could
17 make an additional suggestion?

18 MS EDWARDH: Certainly.

19 MR. DAVID: That is at tab 703.
20 It is at the same time and it also has to do with
21 the State Department contact.

22 It is the before-last paragraph.

23 MS EDWARDH: If you will excuse
24 me; I'm sorry, Mr. Commissioner. Tab 703?

25 THE COMMISSIONER: The second-last

1 paragraph talks about the State Department.

2 MS EDWARDH: I appreciate
3 everyone's assistance in drawing me to references
4 to the State Department, but I'm actually not
5 interested --

6 THE COMMISSIONER: This says
7 Justice, though, too.

8 MS EDWARDH: I'm sorry.

9 THE COMMISSIONER: In the third
10 line:

11 "... were in touch with
12 officials ... on the 9th ..."

13 And subsequently, I guess.

14 MS GIRVAN: I do believe there's
15 another document in which perhaps Helene Bouchard
16 mentions to me that informal contacts would be
17 made before a diplomatic note would be done,
18 something to that effect. But I wouldn't have
19 known what was done.

20 MS ROUSSEL: The witness may be
21 referring to tab 23. I believe it's an e-mail of
22 October 2nd.

23 MS EDWARDH: So the only
24 reference -- do you want to read that, then, if
25 you have something there?

1 MS GIRVAN: It's a message from
2 Maureen Girvan to Nancy and Bob Archambault.

3 MS EDWARDH: Yes?

4 MS GIRVAN: And it's in response
5 to a message from Nancy, saying that we would wait
6 to see if we got confirmation in our access.

7 "Nancy: Yes, and in fact we
8 are going to follow up the
9 fax with a call this morning,
10 though the advice we received
11 from public relations
12 suggests that we are unlikely
13 to be successful. I will
14 speak with Robert Archambault
15 a little later (I missed
16 their first call), but
17 understand from Helen that
18 they are likely to check with
19 their contact at Justice
20 informally as a first step at
21 their end. The Dipnote, if
22 necessary, can follow that."

23 That's on October 2nd.

24 MS EDWARDH: That's quite helpful.

25 Thank you very much.

1 MS GIRVAN: That's all I know.

2 MS EDWARDH: Can you give me any
3 sense of whether or not you received, whether
4 through e-mail or by telephone, any information
5 from your colleagues about an informal contact at
6 Justice and whether it produced any information
7 for you?

8 MS GIRVAN: No.

9 MS EDWARDH: So you have no
10 recollection of that?

11 MS GIRVAN: I have no recollection
12 of any further --

13 MS EDWARDH: And can we agree that
14 there's no record of what the Department of
15 Justice would have said on or about October 2nd?

16 MS GIRVAN: I haven't seen a
17 record.

18 MS EDWARDH: I wanted to ask a
19 very general question.

20 You were very candid, Ms Girvan,
21 in the context of our discussion around your
22 framework for understanding what was happening to
23 Mr. Arar from your past experience. But I want to
24 put this question to you: If you had been of the
25 view that it was a realistic probability that

1 Mr. Arar, as a Canadian citizen, would be sent to
2 Syria, if you thought it was a real risk on
3 October 3rd, what steps would you have taken, if
4 any, that are different from the ones you took?

5 MS GIRVAN: Let me think. If I
6 thought that it was a realistic possibility that
7 he was going to be deported to Syria that day?

8 MS EDWARDH: Or in the immediate
9 future.

10 MS GIRVAN: I would have consulted
11 Ottawa immediately. I would have called Nancy and
12 asked her to consult with Gar Pardy or with Helen
13 Harris. That would be something I would be very
14 concerned about.

15 I think I gave you an example, if
16 someone was actually at the airport and there was
17 an indication that they might send them to the
18 other country, then I would ask to speak to the
19 officer.

20 But it's very hypothetical and I'm
21 a little bit uncomfortable going into that because
22 I really deal with realities --

23 MS EDWARDH: Well, it was
24 Mr. Arar's reality, I'm sorry. And I am just
25 asking you had you known that it was likely that

1 he would go to Syria, as he did, would your steps
2 have been the same?

3 And certainly you did call or
4 contact Ms Collins when you left the interview
5 with Mr. Arar; correct?

6 MS GIRVAN: Mm-hmm.

7 MS ROUSSEL: I think I'm going to
8 object the question.

9 Ms Girvan has indicated that it's
10 hypothetical for her to answer and she is not
11 comfortable with that answer. I think it's being
12 unfair to the witness with the hindsight that she
13 has now. I think what's important to this
14 Commission is to know how she dealt with it at the
15 time.

16 THE COMMISSIONER: With respect, I
17 don't agree. I would like to hear, if she is able
18 to answer, what would happen if one -- she has
19 experience as a consul, and if one is confronted
20 with a situation where there's an INS proceeding
21 that could result in removal to Syria, what would
22 she do?

23 If nothing differently, then say
24 so. If she doesn't know, that would be another
25 answer.

1 But I would certainly be
2 interested in knowing if there is an answer, and
3 how a Canadian consul would ask in those
4 circumstances.

5 MS GIRVAN: I think with that in
6 mind I can add that if I'm informed, as I
7 frequently am by family or even the INS officers,
8 that they are intending to deport someone, usually
9 it's to Canada, but say it were to some other
10 place, I would ask the officer to consider having
11 the person deported to Canada, because that would
12 be their wish.

13 So that would be my first step
14 that might be different, you know? If I know that
15 they are considering it, I would ask them to
16 reconsider and to look at Canada.

17 MS EDWARDH: And if your overture
18 or your effort to have a discussion with the
19 relevant authorities led you to believe that you
20 weren't being heard effectively, what is the other
21 kind of emergency rung you would go up as a person
22 dealing with that situation, if you felt the
23 person was at imminent risk and you were not being
24 listened to?

25 MS GIRVAN: I would go back to

1 Ottawa quickly and ask for instructions as to what
2 I could do.

3 The lawyer would be one other
4 possibility, contact the lawyer, because the
5 lawyer is -- and I've done that in the past in
6 case the lawyer doesn't know what's happening.

7 And then if there's a lawyer
8 involved, the lawyer might advise me also with a
9 suggestion as to what the Canadian government
10 could do to assist. I always ask lawyers to let
11 me know if there's something that they feel that
12 the Canadian government can do to assist the
13 detainee.

14 MS EDWARDH: And in the line of
15 authority in which you work, if you felt that the
16 emergency was one that was dire, would you call
17 upon the Canadian Ambassador to assist in some way
18 if you felt that it couldn't get up the chain and
19 back quickly enough?

20 MS GIRVAN: Not the Canadian
21 Ambassador. He is not in my line of authority.
22 My first person would be the senior consul in New
23 York, who was Andre Laporte at the time. And
24 probably at that point I we would agree that I
25 would speak to Ottawa because they are

1 functionally the leaders.

2 I might also discuss it with the
3 Consul General. And I did in fact keep the Consul
4 General apprised of all the circumstances in
5 Mr. Arar's case.

6 But I would not myself call the
7 Ambassador under any circumstances, that I can
8 think of. It would be up to Ottawa to suggest
9 those steps.

10 MS EDWARDH: So ultimately, you
11 move up a line of, if I can call it, a chain of
12 authority or command, that puts you directly at
13 the desk of Mr. Pardy?

14 MS GIRVAN: Yes, and also at the
15 desk of the Consul General. It's sort of a twin.

16 MS EDWARDH: Right. And in this
17 particular circumstance -- and you have just told
18 us you kept the Consul General informed, and we
19 know you did originally place a call to Mr. Pardy.
20 Did you ever speak with him directly in this
21 period of time between October 2nd and Mr. Arar's
22 deportation in the early hours of October the 8th?

23 MS GIRVAN: I don't believe so.

24 MS EDWARDH: And did you ever have
25 any personal conversations with the Consul General

1 other than informing the Consul General of what
2 was transpiring from your perspective?

3 MS GIRVAN: I don't understand.
4 What do you mean "personal conversations"?

5 MS EDWARDH: Did you speak with
6 her other than just sending the e-mails?

7 MS GIRVAN: Oh, yes.

8 MS EDWARDH: You spoke with her
9 directly?

10 MS GIRVAN: Oh, yes. I would walk
11 upstairs. I can't give you the -- I just know
12 that's my practice: would be to go upstairs and to
13 familiarize her with the case.

14 MS EDWARDH: And do you recall
15 getting any advice or direction from the Consul
16 General about any aspect of what was happening to
17 Mr. Arar between the 2nd and the 8th of October?

18 MS GIRVAN: I don't recall
19 anything that isn't already on the record. I
20 don't recall, no.

21 MS EDWARDH: I think that covers
22 that area, Ms Girvan.

23 I would like to go back to another
24 matter I touched on, not to just go over old
25 ground but I think I perhaps was not fair to you.

1 So I want to show you a document.

2 You have made it clear in your
3 testimony that after October 3rd, one of your
4 priorities was to ensure that Mr. Arar had a
5 lawyer.

6 MS GIRVAN: Well, just to be
7 clear, it's not my duty to ensure that he has a
8 lawyer, but it is my duty to know that he has the
9 names, if he needs them, and that he is aware of
10 how to obtain a lawyer.

11 So I was certainly concerned --
12 did you say after the 3rd?

13 MS EDWARDH: Yes.

14 MS GIRVAN: Of facilitating a
15 visit by that lawyer.

16 MS EDWARDH: That's all I'm really
17 saying.

18 MS GIRVAN: That's great.

19 MS EDWARDH: And you have also
20 testified -- and I can show it to you, if you
21 would like -- that but during the day of October
22 7th, just before Mr. Arar was deported, you were
23 firmly of the view that he had a lawyer?

24 MS GIRVAN: Yes.

25 MS EDWARDH: We covered some tabs,

1 and they were tabs 44 and 42, in your
2 cross-examination the other day, where I suggested
3 to you that the language of the notes made it
4 appear as though Mrs. Oummih was really
5 conditionally retained, but you were strongly of
6 the view that the friend had called back and said
7 that they had retained her.

8 Do you recall that discussion we
9 had?

10 MS GIRVAN: I believe she was
11 retained.

12 MS EDWARDH: Yes. And certainly
13 while your written notes don't reflect that, there
14 is another note you should look at, which I think
15 confirms your view not mine.

16 MS GIRVAN: Mm-hmm.

17 MS EDWARDH: It's tab 149. That
18 would be in Volume 2.

19 MS GIRVAN: Thank you.

20 MS EDWARDH: And this is a note
21 made sometime later. It is made on the 29th of
22 October.

23 Do you see that?

24 MS GIRVAN: Yes.

25 MS EDWARDH: If you look down that

1 second paragraph, Mrs. Girvan, you will see --
2 take a moment to read it.

3 MS GIRVAN: Thank you.

4 --- Pause

5 MS GIRVAN: Tuesday is the 8th,
6 yes.

7 MS EDWARDH: Yes. There is a
8 calendar there that might assist you.

9 MS GIRVAN: Yes.

10 MS EDWARDH: The Tuesday is the
11 8th.

12 MS GIRVAN: Thank you.

13 MS EDWARDH: So if I'm --

14 MS GIRVAN: I'm sorry. I'm just
15 reading the second part.

16 "MDC then told Girvan that
17 subject had been moved."

18 MS EDWARDH: It the next part:

19 "Girvan then tried to reach
20 the lawyer, and when she did,
21 was told that lawyer was no
22 longer representing Mr. Arar
23 because the family had not
24 kept its promise to get a
25 cheque to her on the Monday.

1 Lawyer had apparently
2 contacted ... that morning,
3 (Tuesday) and had been told
4 that the secretary had
5 forgotten to send the cheque
6 the day before. She had not
7 believed this. Stephen Watts
8 said that he would ask Janis,
9 also with the Centre for
10 Constitutional Rights, to try
11 to reach the lawyer again to
12 confirm these details."

13 Certainly I drew from that the
14 following, and you tell me whether it's a fair
15 conclusion.

16 MS GIRVAN: Mm-hmm.

17 MS EDWARDH: That on the 7th, you
18 believed that Mr. Arar had a lawyer, and it isn't
19 until the next day, the Tuesday --

20 MS GIRVAN: Actually, the 9th, two
21 days later.

22 MS EDWARDH: Help me with the --

23 MS GIRVAN: Okay, sorry. Because
24 I don't think I spoke to her on the Tuesday -- I
25 will have to check.

1 MS EDWARDH: "Lawyer had
2 apparently contacted ... that
3 morning."

4 It did seem to me that you were
5 suggesting that you had spoken to the lawyer on
6 the Tuesday.

7 You see, it says you spoke to
8 Mrs. Arar, or Dr. Mazigh, and then you have an
9 opportunity after you speak to her to try to
10 contact MDC to see what's gone wrong with the
11 telephone calls.

12 MS GIRVAN: Right.

13 MS EDWARDH: MDC tells you that
14 Mr. Arar has been moved, and then you call the
15 lawyer.

16 MS GIRVAN: I tried to reach the
17 lawyer.

18 MS EDWARDH: "... and when she
19 did, was told that the lawyer
20 was no longer representing
21 Mr. Arar ..."

22 MS GIRVAN: You will have to
23 forgive my lack of clarity in my writing at times,
24 but I think if we check other documents, I did not
25 speak to the lawyer on the Tuesday. I only

1 reached her on the Wednesday but that her
2 reference is back to the Tuesday.

3 So that when the lawyer -- I'm
4 saying that the lawyer told me that she had
5 apparently contacted one of the family that
6 morning, on the Tuesday, and had been told that
7 the secretary had forgotten to send the cheque.

8 I don't remember this conversation
9 all that well, but I would suggest we look at
10 another document. There's a document that is the
11 day after -- the CAMANT note the day after.

12 MR. BAXTER: Mr. Commissioner,
13 it's tab 52, CAMANT note 48, I believe, that the
14 witness is referring to.

15 MS GIRVAN: Fifty-two?

16 MS EDWARDH: It is note 52. I am
17 sorry, could I have the tab reference?

18 MR. BAXTER: It's tab 52, CAMANT
19 note 48.

20 MS EDWARDH: Thank you.

21 MS GIRVAN: There's an earlier one
22 also in which it says a friend of the family
23 confirmed that the lawyer had been detained --
24 retained."

25 MS EDWARDH: Why don't you flip

1 back to see whether you can locate that.

2 MS ROUSSEL: Tab 46.

3 MS GIRVAN: Thank you.

4 Forty-six. Mm-hmm. That is the
5 second. That is the 8th, the Tuesday.

6 MS EDWARDH: So this reflects a
7 telephone call --

8 MS GIRVAN: Once I learned that
9 Mr. Arar was missing, I called the family and the
10 friend of the family --

11 MS EDWARDH: Yes?

12 THE WITNESS: -- to inform them
13 that he had been moved, and that we were trying to
14 determine to where. They said they were waiting
15 for a call from the lawyer and that they would let
16 us know what the lawyer tells them.

17 So, you see, I was trying to reach
18 the lawyer, but I couldn't reach her, and the
19 family was waiting for her call to report on, as I
20 understood it, the interview the night before.

21 And he confirmed there, you see,
22 although I didn't write it the day before, that
23 she has been retained, and he has not yet spoken
24 to the lawyer. Therefore, I believe this agrees
25 that she was retained on the Monday.

1 MS EDWARDH: Well, certainly the
2 8th is what day?

3 MS GIRVAN: Tuesday.

4 MS EDWARDH: Right. So what you
5 are told, as recorded in this note, is that on the
6 8th the family had intended on retaining her.
7 There is no reason to assume they hadn't retained
8 her on the Monday as well?

9 MS GIRVAN: No. I'm sorry?

10 MS EDWARDH: Okay.

11 MS GIRVAN: Could you say that
12 again?

13 MS EDWARDH: Well, on the 8th of
14 October --

15 MS GIRVAN: Yes.

16 MS EDWARDH: -- which is what?

17 MS GIRVAN: Tuesday.

18 MS EDWARDH: Tuesday. You're told
19 that the lawyer has been retained.

20 MS GIRVAN: Correct.

21 MS EDWARDH: You knew that the
22 interview was earlier.

23 MS GIRVAN: Correct.

24 MS EDWARDH: And all I'm doing is
25 suggesting to you that your interpretation of what

1 was said to you was that the lawyer had been
2 retained and would be acting at the interview on
3 the Monday?

4 MS GIRVAN: I was already of that
5 opinion on the Monday, but also, of course, he's
6 telling me he hasn't yet heard from her on that
7 day, on the 8th --

8 MS EDWARDH: But that she was
9 retained.

10 MS GIRVAN: Yes, she was retained.

11 MS EDWARDH: That's all I'm trying
12 to establish. I had led you through a series of
13 notes which questioned whether there was a basis
14 to believe it.

15 MS GIRVAN: Yes.

16 MS EDWARDH: And really I attach
17 more significance to Note 149 because, in fact, it
18 would appear that shortly thereafter, on the
19 Wednesday, you're being told that she considers
20 herself no longer acting.

21 MS GIRVAN: On the 9th.

22 MS EDWARDH: Because she had not
23 been "properly retained" or put in funds?

24 MS GIRVAN: This I didn't know.
25 All I know is that -- actually I don't remember

1 how that worked -- but she was retained, as far as
2 I knew --

3 MS EDWARDH: On the 7th.

4 MS GIRVAN: Mm-hmm.

5 MS EDWARDH: And several days
6 later you learn that she's no longer acting?

7 MS GIRVAN: I think that's
8 probably right. I just want to say that this
9 message was a little confusing to me when I read
10 it over again because Steven Watts is saying
11 things and I'm saying things. So I was just a
12 little unclear.

13 But when I read, though, that I
14 had in an early -- that Girvan tried to reach the
15 lawyer and when she did, as long as we understand
16 that that was on the 9th, then I think that she
17 must have told me that. It's just that the 9th
18 was a very confusing and busy morning, and so
19 probably the main thing to me was to -- that she
20 hadn't found him.

21 MS EDWARDH: In any event, in this
22 confusion and the various things you're hearing,
23 Mr. Watts is saying to you, "I will try and
24 confirm what happened here"?

25 MS GIRVAN: Mm-hmm.

1 MS EDWARDH: Is that correct?

2 MS GIRVAN: For his purposes.

3 MS EDWARDH: Well, for whatever
4 purpose. But that's what he's trying to do, is
5 confirm what happened?

6 MS GIRVAN: Mm-hmm.

7 MS EDWARDH: Now, I want to go
8 back to one other issue, and it's this issue of
9 notice.

10 You testified on the last occasion
11 that you now know Mr. Arar was given a notice or a
12 document from INS that required him to respond in
13 five days? You now know that?

14 MS GIRVAN: I've seen the Order of
15 Removal, mm-hmm.

16 MS EDWARDH: Yes.

17 MS GIRVAN: I don't know if he was
18 given it.

19 MS EDWARDH: And you also
20 testified that you don't have any memory today of
21 whether or not the document he received and he
22 shared with you had more than -- was a one-page
23 document or was more than one page. You just have
24 no memory of that today?

25 MS GIRVAN: That's correct.

1 MS EDWARDH: Furthermore you said
2 that if you had seen anything in the document,
3 that you would have noted it, that it said "You
4 have five days to respond"?

5 MS GIRVAN: Yes.

6 MS EDWARDH: And certainly then in
7 addition to making your own note of it, you would
8 have raised this with the lawyer --

9 MS GIRVAN: Yes.

10 MS EDWARDH: -- to make sure that
11 she understood that?

12 MS GIRVAN: Yes.

13 MS EDWARDH: We also agreed that
14 the only notes you made of the document that you
15 saw really related to the factual allegations of
16 the inadmissibility? You didn't write out the
17 whole of the document?

18 MS GIRVAN: No.

19 MS EDWARDH: And I raised with you
20 the possibility that perhaps Mr. Arar was not
21 really given a notice, and you said that had
22 dawned on you as well? That thought had passed
23 through your mind?

24 MS GIRVAN: I certainly asked
25 myself.

1 MS EDWARDH: Now, I wanted to put
2 to you another suggestion, and I think we have to
3 look at tab 43. This is the decision.

4 THE COMMISSIONER: Tab 43?

5 MS EDWARDH: Yes, tab 43.

6 THE COMMISSIONER: Thank you.

7 MS EDWARDH: At page 3 of the
8 decision which resulted in Mr. Arar's removal, it
9 says the following, and I think I would like to
10 start -- let's do this in a fullsome way, in the
11 second full paragraph, beginning:

12 "On October 1, 2002, the
13 Immigration and
14 Naturalization Service..."

15 Do you see where I'm reading?

16 MS GIRVAN: Yes, I do.

17 MS EDWARDH:

18 "...initiated removal
19 proceedings under section
20 235(c) of the INA against
21 Arar with service of
22 Form I-147, charging him with
23 being inadmissible to the
24 United States. Specifically,
25 the Service charges Arar with

1 being temporarily
2 inadmissible under INA..."
3 And then they quote a regulation.
4 " ...in that he is an alien
5 who is member of a foreign
6 terrorist organization."
7 And it goes on:
8 "...upon initiating removal
9 proceedings against Arar
10 under section 235(c), the INA
11 in accordance with 8..."
12 Some other regulation.
13 "...provided Arar with 5 days
14 to respond to the charge. On
15 October 1, 2002, the Service
16 served upon Arar all
17 unclassified documents that
18 the Service relied upon in
19 issuing the form I-147.
20 These documents included:
21 (1) an executed I-147
22 noticing Arar of the
23 requirement to respond within
24 five days from October 1,
25 2002 to INS with a written

1 statement and any other
2 accompanying information
3 regarding the allegations and
4 the charge of
5 inadmissibility; (2) an
6 attachment to the I-147
7 alleging Arar to be a member
8 of..."

9 Et cetera.

10 So this document reciting what it
11 was that the INS says it gave Mr. Arar clearly
12 refers to what must have been at least two pages?
13 Fair enough? It refers to: one, part of the
14 document giving notice; the other, setting out the
15 factual allegations of inadmissibility.

16 MS GIRVAN: Yes.

17 MS EDWARDH: Is that a fair
18 conclusion?

19 MS GIRVAN: Mm-hmm.

20 MS EDWARDH: And --

21 MS GIRVAN: On the third.

22 MS EDWARDH: What concerns me, I
23 don't want to leave any --

24 THE COMMISSIONER: There's a third
25 one too, down further, as the witness said --

1 MS GIRVAN: A publication.

2 THE COMMISSIONER: -- a
3 publication --

4 MS GIRVAN: And a fourth,
5 actually. Four.

6 THE COMMISSIONER: Four -- four
7 documents.

8 MS GIRVAN: Two different
9 publications.

10 MS EDWARDH: A publication from a
11 free legal service?

12 MS GIRVAN: Mm-hmm.

13 MS EDWARDH: Right. I take it at
14 no time did you have any clear recollection of
15 Mr. Arar showing you a publication about free
16 legal services because you were, in fact, talking
17 to him about the family's lawyer -- you knew there
18 had been a lawyer picked out by the family?

19 MS GIRVAN: I told him about that,
20 but I don't remember him showing me any other
21 documents.

22 MS EDWARDH: And were you aware
23 from your dealings with "X" and "Y" that
24 identifying counsel or getting pro bono counsel
25 and being provided with lists of pro bono counsel

1 by MDC was a big problem on the 9th floor?

2 MS GIRVAN: I actually didn't know
3 that they supplied them with them.

4 MS EDWARDH: All right. Now,
5 there's another publication that is issued here.

6 Do you have any recollection of
7 seeing or viewing that publication in the hands of
8 Mr. Arar when you spoke to him on October 3?
9 That's the one listing al-Qaeda as a foreign
10 terrorist organization.

11 MS GIRVAN: No.

12 MS EDWARDH: You have no
13 recollection of that being a part of any document
14 that he brought and produced in your discussions?

15 MS GIRVAN: No.

16 MS EDWARDH: So if you can help us
17 for a moment, one is left with one of two possible
18 inferences -- perhaps even one of three possible
19 inferences.

20 Certainly you have no recollection
21 of seeing those last two documents and no
22 recollection of seeing a notice document?

23 MS GIRVAN: That's correct.

24 MS EDWARDH: So could you have
25 been so shocked by -- and you've said you were

1 shocked -- by the allegation that Mr. Arar was a
2 member of al-Qaeda, that it just didn't -- the
3 other documents didn't seem important and you just
4 didn't register them? Is that possible?

5 MS GIRVAN: I don't think so. He
6 drew my attention to that document, and we just --
7 I wrote it down and we went on talking. If he had
8 drawn my attention to another document with
9 information on it, I think I would have noted that
10 as well.

11 MS EDWARDH: I'm not suggesting --

12 MS GIRVAN: But I can't do more
13 than that.

14 MS EDWARDH: I'm certainly not
15 suggesting that Mr. Arar drew your attention to
16 that.

17 The question is whether or not, in
18 reviewing the factual allegations leading to the
19 determination of inadmissibility or the suggestion
20 of inadmissibility, that you were so surprised or
21 shocked, you may not have noticed it, whether he
22 raised it with you or not, because you have the
23 document in your hand?

24 MS GIRVAN: It seems unlikely in
25 that I wrote down everything, but I can't -- I

1 can't really answer your question better than
2 that.

3 MS EDWARDH: So you can't exclude
4 that you may have missed it then?

5 MS GIRVAN: Hypothetically I'm
6 sure anything -- missing something is possible but
7 I really noted what he showed me.

8 MS EDWARDH: Well, with respect,
9 you noted only one portion of a document. You
10 noted the allegations of factual matters that led
11 to the conclusion of inadmissibility.

12 You didn't notice whether there
13 was going to be a hearing or whether it was a
14 notice of any other proceeding.

15 All you've written down as a
16 record of your observations of the document are
17 the facts that are alleged.

18 MS GIRVAN: And I think I noted
19 anything that Mr. Arar told me of concern. So if
20 Mr. Arar had told me that he had to answer, I
21 would have noted it.

22 MS EDWARDH: I'm not suggesting --

23 MS GIRVAN: Sorry.

24 MS EDWARDH: -- that Mr. Arar told
25 you that. You have the document in front of

1 you --

2 MS GIRVAN: I don't remember
3 seeing anything to the effect of that.

4 MS EDWARDH: Okay, but you
5 certainly cannot exclude that it was on the
6 document you reviewed --

7 MS GIRVAN: Without seeing it, I
8 don't suppose I can.

9 MS EDWARDH: I don't believe it's
10 before this Commission of Inquiry --

11 MS GIRVAN: No.

12 MS EDWARDH: -- or it certainly
13 isn't part of any record that I've seen.

14 MS McISAAC: Can Ms Edwardh
15 confirm that Mr. Arar in fact no longer has the
16 document?

17 MS EDWARDH: Absolutely. The
18 document was -- I think I can correct this if I'm
19 wrong, I believe the document was removed from him
20 when he arrived in Syria.

21 THE COMMISSIONER: In any event,
22 we don't have it. She doesn't have it.

23 MS EDWARDH: Or, alternatively,
24 was left in MDC when he was removed.

25 We have provided the Commission

1 the only document that we are aware of, which was
2 obtained through CBS.

3 THE COMMISSIONER: That's the
4 removal order that we're looking at?

5 MS EDWARDH: Yes, that's the
6 removal order.

7 THE COMMISSIONER: Right. Thank
8 you.

9 MS EDWARDH: Now, I want to just
10 turn to a general area for a moment.

11 Ms Girvan, I would like to talk
12 about what the function of a CAMANT note is.

13 You make records of your
14 communication with detainees in the CAMANT note.
15 What are the purposes? What are you taught that
16 should go into a CAMANT note, and why are you
17 making it?

18 MS GIRVAN: The purpose of the
19 CAMANT system was to a great extent replace files,
20 you know, written files. That was the idea.

21 We always end up with both a
22 written file and a CAMANT file, but most of the
23 material would go in the CAMANT file.

24 In general, the things in the
25 written file would be the faxes and the documents

1 that were not electronic.

2 So, in effect, it's really a file
3 record of the case, and it is also -- it replaced,
4 at the time of its coming into use, the use of
5 e-mails back and forth in general about cases.
6 The CAMANT system replaced that, and so you could
7 message the various people around the world who
8 might be interested in the case, and headquarters,
9 through the CAMANT system without doing a separate
10 e-mail.

11 MS EDWARDH: So would I be correct
12 then in assuming that one of the principal
13 functions of the CAMANT note is to inform persons
14 up the chain of command, so to speak, about the
15 circumstances of the person's detention so that
16 they could provide instructions to you?

17 MS GIRVAN: That would certainly
18 be one of the functions. Remember -- you do have
19 to remember that CAMANT notes are written on every
20 single thing we do, or just about. So there are
21 multiple functions of the CAMANT note.

22 But in the case of detained
23 Canadians, and in the case of doing a report of a
24 visit, there would be both a phone call, in most
25 cases, and a written file note, and they would be

1 so that Ottawa or headquarters could respond -- or
2 any other -- we might copy other missions like
3 Tunis or, you know, in the case --

4 MS EDWARDH: Right. But you
5 certainly -- one of its functions is to
6 communicate for instructions, should instructions
7 be warranted?

8 MS GIRVAN: Yes.

9 MS EDWARDH: The second is to
10 provide information to the relevant persons who
11 can then communicate with the family?

12 MS GIRVAN: Yes, and by phone. I
13 must add that because we work in such a -- it is
14 important to realize that we work in a very
15 multitasking environment, so that as I would be
16 getting phone calls, I would be making phone
17 calls, I would be making notes, I would be
18 speaking with people at the front desk.

19 So I just wanted you to be aware
20 that it's sort of going on on many levels all the
21 time, the communication.

22 But that's the CAMANT note; it is
23 the written file.

24 MS EDWARDH: If you know that
25 Ms Collins is going to receive a call from members

1 of Mr. Arar's family, then you know they're also
2 relying in part on you to describe what you have
3 learned through the consular visit, once he has
4 approved the giving of that information?

5 MS GIRVAN: Which I did verbally
6 to them, mm-hmm.

7 MS EDWARDH: Yes, but once he's
8 approved it, it's your information that gets
9 transmitted to the family?

10 MS GIRVAN: It depends. It
11 depends. Because, in fact, you see, partly
12 because we're in the United States, families do
13 tend to phone directly to the consul, so I would
14 not, in fact, rely on the CAMANT file for the
15 information to be given to the family since I
16 would also telephone them and speak to them in
17 person, or Nancy would, or Gar Pardy would. So
18 you really have to think of the tandem of the note
19 and the phone.

20 MS EDWARDH: Yes. And I
21 appreciate that.

22 MS GIRVAN: Sorry.

23 MS EDWARDH: What I'm trying to
24 get a handle on is, if Ms Collins is in
25 communication with members of Mr. Arar's family,

1 to some extent at least she's relying on your
2 description of what happened at a consular visit
3 that you've put in the CAMANT note?

4 MS GIRVAN: Yes, unless she's
5 spoken to me more recently, absolutely.

6 MS EDWARDH: Okay.

7 Now, when you go into the consular
8 visit with Mr. Arar, and we've looked at some of
9 the tabs, you have clearly described yourself as
10 someone who is taking notes during that visit.

11 MS GIRVAN: Mm-hmm.

12 MS EDWARDH: I'm afraid you're
13 going to have to answer yes or no.

14 MS GIRVAN: I'm sorry, yes.

15 --- Laughter / Rires

16 MS EDWARDH: You've described
17 Mr. Arar as voluble, which I take it means there
18 was an outpouring of description to you?

19 MS GIRVAN: He talks quite a lot.

20 MS EDWARDH: And quickly?

21 MS GIRVAN: I'm not sure how
22 quickly.

23 MS EDWARDH: All right. But he
24 talked quite a lot.

25 And it's clear then, in the course

1 of that communication, that you're not taking
2 verbatim notes, you're trying to isolate
3 information that you need for later on?

4 MS GIRVAN: In fact.

5 MS EDWARDH: Yes. Is that
6 correct?

7 MS GIRVAN: That's right.

8 MS EDWARDH: You're doing then
9 what I would call -- you're doing your best to get
10 the gist of the communication and its essential
11 elements?

12 MS GIRVAN: That's right.

13 MS EDWARDH: Would I be correct
14 then today that the CAMANT notes that you have
15 identified for us already are the only
16 contemporaneous record of the meeting that you had
17 with Mr. Arar?

18 MS GIRVAN: I think there are also
19 e-mails that may have part of some information out
20 of that visit later on.

21 MS EDWARDH: I asked you the
22 question --

23 MS GIRVAN: Sorry.

24 MS EDWARDH: -- are those CAMANT
25 notes the only contemporaneous records of the

1 meeting you had with Mr. Arar on October 3?

2 MS GIRVAN: By "contemporaneous,"
3 do you mean that month, or that week, or...

4 MS EDWARDH: I'm going to say
5 within a four- or five-hour period?

6 MS GIRVAN: Okay.

7 I think they are the only thing
8 written that day on it. You know, I've been
9 surprised by the e-mails, because they have turned
10 up, so I can't be positive. But I believe on that
11 day it was mostly in the CAMANT and on the phone.

12 MS EDWARDH: Right. So then you
13 did not come back to your office with your
14 handwritten notes and dictate a more fullsome
15 record of your communication? What we have now is
16 what you've set out in the CAMANT notes?

17 MS GIRVAN: I did come back to the
18 office with my notes.

19 MS EDWARDH: Yes, yes. We
20 understand that. You came back with your notes
21 and you put in a record of your recollection,
22 using your notes, into the CAMANT record?

23 MS GIRVAN: Correct, correct.

24 MS EDWARDH: And you did it --

25 MS GIRVAN: Sporadically.

1 MS EDWARDH: There were some
2 dribbles over that day.

3 MS GIRVAN: Mm-hmm.

4 MS EDWARDH: But they're all
5 October 3; correct?

6 MS GIRVAN: I believe so.

7 MS EDWARDH: Yes.

8 MS GIRVAN: Yes, I think.

9 MS EDWARDH: Now, you didn't
10 dictate into another record --

11 MS GIRVAN: No.

12 MS EDWARDH: -- the context or the
13 facts disclosed in the discussion?

14 MS GIRVAN: No.

15 MS EDWARDH: Were your notes on
16 loose pages, or were they in a book of some kind?

17 MS GIRVAN: I can't absolutely
18 remember if they were on loose pages or --
19 sometimes I carried a stenographic pad when I went
20 to the prison, so I honestly -- my recollection is
21 that, whichever it was, they ended up being loose
22 pages. You know, I may have taken them out of the
23 steno pad at some point. That's my recollection,
24 but it is a long time ago.

25 MS EDWARDH: Yes, okay.

1 So would you have put the notes in
2 the file that you had in order to -- for example,
3 your first dictation, if I can call it that, or
4 first writing in the CAMANT system, if we look at
5 tab 27 -- I think this is your first one, and
6 correct me if I'm wrong. Is it 12:13?

7 MS GIRVAN: I just want to check.
8 I think there might have been a little one
9 earlier. If I go back in this book, will I get to
10 the earlier ones?

11 MS EDWARDH: Yes.

12 MS GIRVAN: Let's see. 23, 25 --
13 just check for 24. It looks right because 23 is
14 on October 2, and twenty -- yes, okay, I think it
15 is the first.

16 MR. BAXTER: You did file a CAMANT
17 note, number 24, at 11:37 on the October 3.

18 THE COMMISSIONER: That is tab...

19 MR. BAXTER: That is tab 24 of
20 Exhibit P-40, which is the complete New York
21 collection.

22 Again, we come to the problem of
23 the P-42 having only certain of the CAMANTs and
24 not others. That, however, doesn't deal so much
25 with your visit. It is the text of facts to the

1 warden's office --

2 MR. DAVID: Mr. Commissioner,
3 CAMANT note 24 is our tab 26.

4 MS GIRVAN: Yes. Okay. So the
5 first thing on the file was actually the fax to
6 the warden to facilitate the visit of the
7 lawyer --

8 MS EDWARDH: I appreciate that.
9 What I'm asking and talking about is the consular
10 visit --

11 MS GIRVAN: But I think you're
12 right. So I think that shows that the first
13 write-up on the visit is the next page.

14 MS EDWARDH: Right. And that
15 would have been entered into the CAMANT system at
16 12:13 Ottawa time?

17 MS GIRVAN: That is correct.

18 MS EDWARDH: And so, two minutes
19 later, in a separate transmission, at 12:15, you
20 send to Ottawa the single statement that Mr. Arar
21 is alleged to be a member of al-Qaeda?

22 MS GIRVAN: That's right.

23 MS EDWARDH: And then an hour and
24 30 minutes later, you send another note --

25 MS GIRVAN: I just might mention

1 that in between there, it is a fairly good
2 demonstration of what I was explaining to you,
3 that I'm on the phone as well. Because in between
4 messages are my phone calls to tell the families
5 about the visit and to tell them everything that I
6 can.

7 So I am really not relying on the
8 written record to tell the family, I'm actually
9 telling them.

10 MS EDWARDH: Fair enough. And
11 then in tabs 31 and 32, which are notes 29 and
12 30 --

13 MS GIRVAN: Yes.

14 QUESTIONER: -- you conclude, I
15 take it, from your notes, what you want to record
16 in the CAMANT system about this particular consul
17 visit.

18 MS GIRVAN: That's right.

19 MS EDWARDH: Is that fair?

20 MS GIRVAN: I would say so.

21 MS EDWARDH: Now, in the ordinary
22 course, during the day, you would have had these
23 notes with you and maybe have referenced to them
24 two or three times as you do this work. Is that
25 fair?

1 MS GIRVAN: Sorry.

2 MS EDWARDH: During the day, you
3 would have had these notes physically in your
4 possession, and between one e-mail --

5 MS GIRVAN: On my desk.

6 MS EDWARDH: -- and the next
7 e-mail, would you have just located them in the
8 file?

9 MS GIRVAN: I don't know. They
10 could have been on my desk.

11 MS EDWARDH: And at the conclusion
12 of your recording your consular visit, so let's
13 bring you to the end of October 3, do you know
14 what you did with your notes?

15 MS GIRVAN: No.

16 I just want to mention one other
17 thing, it is that I just noticed, and it may be
18 worth mentioning, it is that I continue to be
19 somewhat distracted throughout the day by all the
20 calls because, you see, I made the note, and you
21 were asking me if I had completed all notes on the
22 subject at 4:27, but in fact I was interrupted
23 again by a phone call, because in 4:33 I register,
24 which means I've already been writing already for
25 a couple of minutes about the call from the friend

1 of the family.

2 So it just shows that I can't be
3 absolutely positive that I got everything in, but
4 I'm trying to get everything in.

5 I remember thinking once that
6 we're not like policemen, you know -- I think
7 maybe we should be perhaps like policemen. But
8 we're not. We can't.

9 So I don't come back and say, all
10 right, and do absolutely the time and everything
11 that has happened. It's not a file like that.
12 But I do my best.

13 MS EDWARDH: I'm not suggesting
14 you should be a policeman. I can assure you, they
15 don't make better notes.

16 MS GIRVAN: No?

17 --- Laughter / Rires

18 MS EDWARDH: But I'm trying to
19 just understand that you have your notes and over
20 the course of the day you send --

21 MS GIRVAN: Yes.

22 MS EDWARDH: -- various bits of
23 the consular visit or information of the consular
24 visit.

25 You have no recollection, I take

1 it, of putting the notes in a file?

2 MS GIRVAN: I don't have
3 recollection.

4 MS EDWARDH: Do you know, for
5 example, whether there is any policy about records
6 that are kept, handwritten notes that are kept
7 after interviews are conducted with detainees?
8 Does Foreign Affairs have any policy?

9 MS GIRVAN: My -- I can't tell you
10 if there is a policy. There may be one; I don't
11 know of. But my understanding was that CAMANT was
12 the file, and if I was making rough notes
13 beforehand, I could destroy those notes. I would
14 probably at some point shred them, you know.

15 I might keep them on the file for
16 a while and often I may have a few bits of paper
17 in the file until I was -- you know, if I needed
18 the information.

19 MS EDWARDH: And I take it then
20 it's your evidence that upon entering all this
21 information into the CAMANT system on October 3,
22 that shortly thereafter, in the ordinary course of
23 your business, you destroyed or shredded the
24 notes?

25 MS GIRVAN: I realize that I --

1 when you asked me that the other day, I can't be
2 positive again, because I just don't know -- I
3 don't write those things down. But it could have
4 laid in the file, as sometimes is the case.

5 I know it wasn't in the file when
6 I was asked to send all my notes up to Canada. I
7 know that there were no handwritten notes in the
8 file at the time. That I know.

9 MS EDWARDH: And when was that?

10 MS GIRVAN: That was when Mr. Arar
11 was released and the chronologies were started. I
12 didn't have them then.

13 MS EDWARDH: So we know then in
14 November the notes are gone. November 2003, the
15 notes are gone.

16 We also know, I take it, that it
17 is your ordinary practice to destroy the notes; is
18 that what I'm hearing you say?

19 MS GIRVAN: Yes.

20 MS EDWARDH: And there was no
21 direction from the Department of Foreign Affairs
22 that in cases that looked complicated, you were to
23 keep a full record of your handwritten notes as
24 well?

25 MS GIRVAN: Not that I'm aware of.

1 MS EDWARDH: And would it also be
2 fair to say that you have no recollection of
3 turning to your CAMANT notes and using them to
4 supplement your memory or to think about the
5 events after, let's say, November 5 or 6 -- I'm
6 sorry, the handwritten notes. You had occasion to
7 go back to your handwritten notes, after
8 everything was entered into the CAMANT system?

9 MS GIRVAN: I can't tell you that.
10 I don't know.

11 MS EDWARDH: You have no
12 recollection of having to return to those notes?

13 MS GIRVAN: I have no
14 recollection, you are right.

15 MS EDWARDH: Nor would you have a
16 business reason to go back and read them into
17 another record or sort them for another purpose.
18 Once you have put them into CAMANT, as far as you
19 are concerned, they are just scrap paper, if you
20 don't need them any more?

21 MS GIRVAN: The only difficulty in
22 agreeing with you would be that, as I say, I
23 sometimes might keep them in the file for a while,
24 might have them for a while, might have the
25 papers -- if it was the steno pad, might have had

1 them for a while. But, as you say, I didn't keep
2 those things for a long time.

3 MS EDWARDH: And based on the
4 record as we know it, Ms Girvan, all I am really
5 saying to you, there's nothing I see in this
6 record once you say in November you didn't have
7 your notes --

8 MS GIRVAN: A year later, mm-hmm.

9 MS EDWARDH: Yes. There is
10 nothing in this record that would bring you back
11 to your original interview with Mr. Arar on
12 October 3rd. There is no other occasion you are
13 trying to reconstitute it?

14 MS GIRVAN: Oh, in the meantime?

15 MS EDWARDH: Yes.

16 MS GIRVAN: There would be ongoing
17 discussions about the case over the next period, I
18 suspect.

19 MS EDWARDH: Of course. And I am
20 not suggesting there wouldn't be discussions about
21 the case, that you weren't, as you put it,
22 depressed when he left, that you may have followed
23 it and whatever.

24 But in terms of working from your
25 original consular visit, there is nothing in the

1 record that would support a need to going back to
2 that visit?

3 MS GIRVAN: Yes. I don't know
4 that I did. I don't know that I would.

5 MS EDWARDH: And you agree you
6 can't recall any event that would have caused you
7 to go back until someone asked you to help
8 participate in the chronology?

9 MS GIRVAN: That's right. We are
10 talking two and a half years ago --

11 MS EDWARDH: I know. I am not
12 suggesting --

13 MS GIRVAN: I can't remember.
14 Sorry. I am just trying to be careful and tell
15 you what I can.

16 MS EDWARDH: Fair enough. It is
17 true, though, and I suppose it reinforces how
18 unimportant the notes were to you, that you knew
19 already, when you saw Mr. Arar on the 3rd, that
20 there was something extraordinary about his case?

21 MS GIRVAN: I am sorry. What do
22 you mean?

23 When I went to visit him, I knew
24 there was something extraordinary about his case?

25 MS EDWARDH: Well, you certainly

1 assumed --

2 MS GIRVAN: I knew it was serious.

3 MS EDWARDH: That it was very
4 serious.

5 MS GIRVAN: That's right.

6 MS EDWARDH: That he was in MDC
7 because there were suggestions he may be involved
8 in terrorist activities.

9 That is what you --

10 MS GIRVAN: Before I saw him?

11 MS EDWARDH: No. I am talking
12 about the period of time where you know you have
13 your notes. It's an important case. He is in a
14 facility under severe conditions of confinement --

15 MS GIRVAN: Yes, after I've seen
16 him --

17 MS EDWARDH: And you think the
18 Government of the United States believes that he
19 has some connection to the world of terrorism.

20 MS GIRVAN: Yes. I thought you
21 were referring to before the 3rd.

22 MS EDWARDH: Just that period of
23 time. And even though those events and those
24 thoughts were going through your mind, I take it
25 you at no time considered it important to keep

1 your original notes of the interview?

2 MS GIRVAN: My -- how would I put
3 it? What I would have copied into the CAMANT
4 would have been what I thought was important to
5 the best of my recollection at that time.

6 MS EDWARDH: And I think you have
7 said that. The file for your purposes was the
8 CAMANT system and the handwritten notes were
9 really just scraps that allowed you to make your
10 CAMANT notes?

11 MS GIRVAN: That's correct.

12 MS EDWARDH: No need to keep them,
13 from your perspective?

14 MS GIRVAN: Mm-hmm.

15 MS EDWARDH: If you go to tab 31
16 in your CAMANT notes, it's clear that -- this is
17 one of the notes, note number 29, tab 31.

18 I have a couple of questions.
19 Let's see if you can reconstruct.

20 It's clear Mr. Arar is trying to
21 tell you in some way some of the content of the
22 interrogation?

23 MS GIRVAN: He told me quite a
24 lot.

25 MS EDWARDH: And the important

1 parts of that you have recorded in this note?

2 MS GIRVAN: That and the other
3 part, part 2.

4 MS EDWARDH: That and note 32, I
5 suppose?

6 MS GIRVAN: Mm-hmm.

7 MS EDWARDH: And one of the
8 questions he asks you is about -- he had the
9 suggestion that they knew personal things about
10 him. Is that correct?

11 He tells you that the questions --

12 MS GIRVAN: Using his father's
13 name.

14 MS EDWARDH: You write down here:

15 "The questions were extremely
16 personal."

17 Do you see that?

18 MS GIRVAN: Yes, I see that.

19 MS EDWARDH: And he wondered
20 whether he had had his belongings searched.

21 MS GIRVAN: I just want to get to
22 that part because I remember that -- or at least I
23 remember reading it.

24 That's in paragraph...?

25 MS EDWARDH: I am just looking for

1 it. I know it's in one of these two.

2 It's in the next CAMANT note at
3 tab 32; I am sorry.

4 MS GIRVAN: That's okay.

5 MS EDWARDH: You actually made a
6 reference to it twice, both to his description of
7 the interrogation as involving extremely personal
8 matters, then on the next note "they kept giving
9 him his father's name".

10 Do you see that in the third
11 paragraph?

12 MS GIRVAN: Yes.

13 MS EDWARDH: And he tells you he
14 doesn't use his father's name.

15 He goes on:

16 "He wondered if the police
17 had gone through his effects
18 in Canada..."

19 Do you see that?

20 MS GIRVAN: Mm-hmm.

21 MS EDWARDH: So I take it at this
22 point you knew that he certainly had effects in
23 Canada? He was telling you that.

24 MS GIRVAN: Yes, he is telling me
25 that he had, and I subsequently asked the family

1 if anyone had gone through his effects.

2 MS EDWARDH: Do you know who you
3 asked?

4 MS GIRVAN: I can't remember, but
5 I do remember, and that's why it's noted there. I
6 had asked it during that same day.

7 MS EDWARDH: So what you were
8 asking was whether or not there was a search
9 conducted by police at some time?

10 MS GIRVAN: No -- well, I think I
11 used Mr. Arar's -- I didn't think about it too
12 much. I just said to them Mr. Arar said that they
13 were using his father's name, and he doesn't
14 understand why they would do that. And he asked
15 if anyone had gone through his effects in Canada.
16 And they told me that that was not the case.

17 It wasn't a big issue for me at
18 that time. I just simply noted it.

19 MS EDWARDH: And indeed he was
20 more than just worried about the use of his
21 father's name. You will recall that he told had
22 you that there were extremely personal details
23 about his life that he was interrogated about.

24 MS GIRVAN: I thought by
25 "personal" actually that they were more in the

1 realm of rude than personal. I didn't know what
2 sort of questions were personal, but that's what I
3 understood.

4 MS EDWARDH: Certainly at tab 31,
5 halfway down that page, you make the note, and
6 obviously he gave the gist of this information to
7 you, that:

8 "... the questions were
9 extremely personal. They
10 insulted him, he held his
11 peace. He gave them all his
12 e-mail accounts ..."

13 MS GIRVAN: Right.

14 MS EDWARDH: "... and his family's
15 names, he explained that the
16 lap top he was carrying
17 actually belongs to the
18 company for whom he does
19 contract work..."

20 So that's the gist of what I am
21 saying.

22 MS GIRVAN: That's all I know.

23 MS EDWARDH: Okay. You also made
24 notes of some other observations. This may raise
25 an area that we might have to have some discussion

1 about, Mr. Commissioner.

2 Could you turn to tab 32.

3 In Mr. Arar's outpouring of
4 information to you about what had happened to him
5 over the hours of the interrogation you have made
6 some observations in tab 32, paragraph 1.

7 The first observation I want to
8 ask you about is in the third line, and he
9 describes being asked about Abdullah who lives in
10 Ottawa, also of Syrian origin. And then you say:

11 "The two families know each
12 other, ..."

13 MS GIRVAN: "... according to Mr.
14 Arar..."

15 MS EDWARDH: Yes. Can you cast
16 any light upon whether Mr. Arar was saying they
17 knew each other in Ottawa, or they knew each other
18 in Syria? Or do you have any recollection today?
19 Or could it be either?

20 MS GIRVAN: My best recollection
21 would be that they might have been -- I seem to
22 remember him saying to the effect that Syrians in
23 Canada tend to know each other. They are not a
24 large community.

25 MS EDWARDH: So it may have been a

1 reference to Ottawa?

2 MS GIRVAN: Could have been.

3 MS EDWARDH: Yes. And all I want
4 to establish, indeed I was going to put to you the
5 proposition that indeed that's what Mr. Arar said
6 to you; that it was based on information about
7 knowing the families in Ottawa.

8 MS GIRVAN: Mm-hmm.

9 MS EDWARDH: I don't want to get
10 into any dispute, Mr. Commissioner, by putting
11 this to the witness. If I transgress your earlier
12 concern, please let me know, and then I would like
13 to have some discussion with you about how far I
14 can go.

15 THE COMMISSIONER: All right.

16 MS EDWARDH: Then there is a
17 reference, if I could just take you there, to:

18 "... and his elder brother
19 was in the same school in
20 Syria when they were young."

21 I can't tell whether his elder
22 brother is Mr. Arar's elder brother, or whether or
23 not it's Mr. Abdullah's elder brother, or whether
24 they went to school at the same time, or they just
25 had a connection.

1 MS GIRVAN: My bad writing.

2 MS EDWARDH: This is not intended
3 to be critical, Ms Girvan. I've done interview
4 notes where people are voluble.

5 Would it be fair to say today you
6 are not able to give us the precise understanding
7 you have, because it's not clear whose elder
8 brother is in question at this time?

9 --- Pause

10 MS GIRVAN: I can't be positive.

11 MS EDWARDH: Fair enough. To
12 emphasize the speed at which you have to do this,
13 if I were to suggest to you that in taking down
14 the names -- you have referred to Mr. Abdullah's
15 brother as Nisam.

16 N-I-S-A-M is how you type it into
17 CAMANT?

18 MS GIRVAN: Yes.

19 MS EDWARDH: If I were to suggest
20 to you that that is not correct, that it's
21 Nazih --

22 MS GIRVAN: That would be entirely
23 possible.

24 MS EDWARDH: Right. Because
25 really you are just writing and taking it down as

1 you hear it.

2 MS GIRVAN: In fact, I don't write
3 down everything Mr. Arar says about that subject,
4 because I don't follow it very well.

5 MS EDWARDH: All right. That's
6 fair enough.

7 And you ask him about his
8 employment in the States, and you have a couple
9 names. Steve Vengard. Do you see that?

10 MS GIRVAN: Yes.

11 MS EDWARDH: If I were to tell you
12 it was Winegart, I take it that wouldn't surprise
13 you that you got the spelling incorrect, but the
14 gist of the sound is correct?

15 MS GIRVAN: That's entirely
16 possible.

17 MS EDWARDH: And Steve Meslen is
18 in fact, Steve M-A-I-S-L-I-N.

19 So it is again you hearing a name
20 and doing the best you can?

21 MS GIRVAN: If that's the way his
22 name is properly spelled, then that's what I must
23 have done, is just written it from hearing.

24 MS EDWARDH: And it's fair to say
25 that your job doesn't include at this point saying

1 to Mr. Arar, who is being voluble and speaking
2 about all these things: "Stop, stop, would you
3 spell that for me."

4 That's not what you do.

5 MS GIRVAN: No.

6 MS EDWARDH: Fair enough.

7 I want to jump to one other area,
8 if I could now, Ms Girvan, and it's found in two
9 tabs. It's kind of a recycling that goes on.

10 We might as well start with tab
11 52. This is a note --

12 MS GIRVAN: On the 9th.

13 MS EDWARDH: On the 9th of
14 October. It's a very important discussion, I am
15 going to submit to you, because you were speaking
16 to Dr. Monia Mazigh, Mr. Arar's wife.

17 MS GIRVAN: Mm-hmm.

18 MS EDWARDH: And I take it you
19 would be aware that for a woman in her position,
20 the information you are providing to her, from her
21 perspective, is very important.

22 Is that correct?

23 MS GIRVAN: Yes.

24 MS EDWARDH: So you are again
25 giving her your understanding, and I want to take

1 you to the fourth paragraph.

2 In assuring Dr. Mazigh and also, I
3 think, it's the friend, that you do not believe
4 Mr. Arar will be deported to Syria, you have
5 identified your principal reasons, and they are
6 set out in paragraph 4.

7 The first reason is the U.S.
8 authorities know he is a Canadian citizen.

9 MS GIRVAN: Mm-hmm.

10 MS EDWARDH: Could I ask you to
11 say yes or no.

12 MS GIRVAN: Yes.

13 MS EDWARDH: Thank you.

14 The other is that he travelled to
15 the United States -- I am filling in there -- on a
16 Canadian passport?

17 MS GIRVAN: That's correct.

18 MS EDWARDH: Thirdly, that the
19 U.S. authorities know that the Canadian consulate
20 is involved. They have granted you access to
21 Mr. Arar.

22 MS GIRVAN: That's correct.

23 MS EDWARDH: And fourthly, you
24 have visited him -- I guess that's the same as
25 access -- and that you have clarified his

1 residence?

2 MS GIRVAN: Yes.

3 MS EDWARDH: So all those factors
4 that you list for Mr. Arar's wife are the factors
5 that you strongly believe allow you to say it is
6 highly improbable that your husband is going to
7 Syria?

8 MS GIRVAN: That is something I've
9 been saying all along since no one has ever been
10 deported to their other country of citizenship
11 when they are a Canadian citizen. That is really
12 what I am saying to her.

13 MS EDWARDH: Yes, but there's
14 another thing I am asking you. Those are the
15 principal factors that form the framework of your
16 thinking?

17 MS GIRVAN: Not really. I mean,
18 there are additional things I say to her, but the
19 basic principle is that -- you know, I try to give
20 her some of the factors. But the basic factor is
21 that it isn't done.

22 MS EDWARDH: I see. All right.
23 But the reason it isn't done is because it's a
24 Canadian citizen, et cetera, et cetera; right?

25 MS GIRVAN: Canadian citizen.

1 MS EDWARDH: Right. But when you
2 were reasoning with her you have really these four
3 variables, or four factors, that you lay out to
4 tell her this is the reason it is not going to
5 happen.

6 MS GIRVAN: I have to note that I
7 say I reassure her as much as possible because I
8 think it's less -- we are more worried now, but I
9 still believe it shouldn't happen.

10 MS EDWARDH: I understand that.

11 MS GIRVAN: Right.

12 MS EDWARDH: My point is, I am
13 looking to the factors that you convey to
14 Mr. Arar's wife as to why you are reasoning that
15 it's improbable.

16 MS GIRVAN: Mm-hmm.

17 MS EDWARDH: All right. In
18 addition to those factors, we also know a couple
19 of things, and I am just going to just outline
20 them to you.

21 I just took you to tab 32 where we
22 discussed Mr. Arar's concern about whether someone
23 had searched through his effects, and in addition
24 to those factors, you knew he had effects in
25 Canada --

1 MS GIRVAN: Mm-hmm, yes.

2 MS EDWARDH: -- because he
3 confirmed that.

4 MS GIRVAN: Yes.

5 MS EDWARDH: In tab 22, you
6 knew -- this is very early on, and this is
7 information from the friend?

8 MS GIRVAN: He has a degree,
9 et cetera?

10 MS EDWARDH: Yes, and the other
11 information. You had, I am going to quote it:

12 "He now apparently works for
13 two companies in Canada and
14 does other independent
15 consulting."

16 Do you see that?

17 MS GIRVAN: That's what he had
18 told me, yes.

19 MS EDWARDH: Yes. So you had that
20 information on October 2nd?

21 MS GIRVAN: Mm-hmm.

22 MS EDWARDH: And then on tab 19,
23 you knew that Dr. Mazigh had felt it
24 appropriate -- or I am going to assume this is the
25 case. You get a call from someone in Marlene

1 Catterall's office, Marlene Catterall being an MP
2 in the City of Ottawa?

3 MS GIRVAN: Yes.

4 MS ROUSSEL: Excuse me, but in the
5 case notes it originates with Ms Collins.

6 MS EDWARDH: I'm sorry. You have
7 information that Ms Catterall's office -- thank
8 you -- Ms Catterall's office called Ms Collins?

9 MS GIRVAN: Thank you. That's
10 right.

11 MS EDWARDH: And that would tell
12 you that someone is acting -- no, someone is
13 requesting that their Member of Parliament get
14 involved?

15 MS GIRVAN: Any MP can call and
16 ask about a case.

17 MS EDWARDH: Is that what you
18 understood when you saw that?

19 MS GIRVAN: No, I didn't
20 understand anything. I just noted that --
21 remember in the previous one I had said perhaps
22 BCM should be alerted with press lines because
23 someone might. So I just noted it. I don't take
24 any significance of it at all.

25 MS EDWARDH: All right. Let me go

1 back to the question.

2 You knew basically all those
3 facts. And on October 19th, when you tell
4 Dr. Monia Mazigh what you have said, you said his
5 residence was clarified. On October 9th you knew
6 that Mr. Arar was a resident of Canada?

7 MS GIRVAN: I read those words. I
8 find it a bit odd that I wrote his residence was
9 clarified, I must say, because I don't normally
10 care where someone is resident. I just make the
11 point here that it wouldn't matter where he was
12 resident. He is a Canadian citizen.

13 MS EDWARDH: With the greatest of
14 respect, that's not the point you make.

15 What you say to Dr. Monia Mazigh
16 is that he is not going to be shipped out to Syria
17 because he is a Canadian citizen, he is travelling
18 on a Canadian passport, consular services have
19 been recognized, and he is a resident of Canada.

20 MS GIRVAN: With due respect,
21 that's not what I say to Mrs. Mazigh.

22 MS EDWARDH: His residence is
23 clarified?

24 MS GIRVAN: I do not say to
25 Mrs. Mazigh he will not be shipped out to Syria.

1 MS EDWARDH: It is improbable that
2 he will be shipped out to Syria for the following
3 reasons.

4 MS GIRVAN: That's what I write,
5 that's right. I am just pointing out to you that
6 it wouldn't matter.

7 MS EDWARDH: Well, it -- I hear
8 your view.

9 MS GIRVAN: Yes.

10 MS EDWARDH: But certainly you
11 tell her that the clarification of his
12 residence -- and I take it what you meant is that
13 you are now clear he is a Canadian resident?

14 MS GIRVAN: Mm-hmm.

15 MS EDWARDH: I am sorry. The
16 court reporter has to --

17 MS GIRVAN: Yes. It's just that I
18 am not clear where he was living at the time. I
19 know that he was in Tunisia.

20 MS EDWARDH: Well, you certainly
21 now know -- you wrote on October 9th that you had
22 clarified his residence. So I am going to suggest
23 to you, Ms Girvan, that it was very clear to you
24 on October 9th, given all these other bits and
25 pieces of information, that Mr. Arar was a

1 resident of Canada on an extended leave in Tunisia
2 for various reasons.

3 MS GIRVAN: I cannot say that I
4 was clear that he was a resident of Canada, but I
5 am aware that he was in Tunisia. I can't be clear
6 that I saw him as then living in Canada.

7 MS EDWARDH: Why would you say,
8 why would you write --

9 MS GIRVAN: I don't know.

10 MS EDWARDH: You will agree with
11 me that the words you use --

12 MS GIRVAN: Yes.

13 QUESTIONER: -- convey absolutely
14 clearly that when you wrote that, you had
15 clarified his residence to be Canadian? That's
16 what you wrote?

17 MS GIRVAN: But I didn't clarify
18 his residence.

19 MS EDWARDH: Well, why would you
20 write it?

21 MS GIRVAN: I don't know.

22 MS EDWARDH: Is it possible that
23 you indeed had clarified it and later became
24 confused when you struggled to answer the question
25 over a year later about your original

1 communication with him?

2 MS GIRVAN: I do have one other --
3 is there a document that we can look at on that on
4 that?

5 MS EDWARDH: About the confusion?

6 MS GIRVAN: Yes. I just want to
7 mention, the other reason -- the other thing I
8 might mean, just because I normally don't go and
9 clarify people's residence, is that I may -- and
10 this is really just my best guess --

11 MS EDWARDH: Well, I don't want
12 you to guess. I am sorry.

13 The language of the memorandum
14 speaks to residency; correct?

15 MS GIRVAN: Correct.

16 MS EDWARDH: It speaks to a
17 clarification of residency?

18 MS GIRVAN: Yes.

19 MS EDWARDH: He is asking about
20 searching his effects in Canada. You are trying
21 to get travel documents for his baby to come back
22 to Canada; correct?

23 MS GIRVAN: Yes.

24 MS EDWARDH: And all the things
25 that you now know, including a phone call from an

1 MP, I would suggest to you lead you to the
2 conclusion that his residency is in Canada.

3 Whether it's important or not is
4 irrelevant. You wrote the note.

5 MS GIRVAN: I wrote the note and I
6 believed that he was presently living in Tunisia
7 but a long-term resident of Canada.

8 In other words, he was a Canadian
9 citizen who lived in Canada for the last number of
10 years. But at the time that I met Mr. Arar, I
11 understood that he was living in Tunisia.

12 MS EDWARDH: You never say that
13 anywhere, if that's true, Ms Girvan --

14 MS GIRVAN: No.

15 MS EDWARDH: -- you say to the
16 contrary.

17 MS GIRVAN: That's true.

18 MS EDWARDH: You say in your
19 consular CAMANT notes that you have clarified his
20 residency in circumstances where the only
21 inference is it's as a Canadian resident. And you
22 are now telling us, having destroyed your notes,
23 that Mr. Arar told you he was a resident of
24 Tunisia?

25 MS GIRVAN: He didn't tell me he

1 was a resident of Tunisia. He told me he was
2 living in Tunisia at that time.

3 Residency is a legal thing that I
4 cannot speak to. He may have legal residency, tax
5 residency in Canada, but he is living in Tunisia.
6 He had moved there a few months ago with his wife
7 for a period of time because of the illness of his
8 father or something --

9 MS EDWARDH: I would like to know
10 exactly what words Mr. Arar used to convey that
11 impression. You knew his father-in-law was ill
12 and you knew the family had been there a few
13 months. That you knew?

14 MS GIRVAN: Well, that's what
15 Mr. Arar told me.

16 MS EDWARDH: What words did he say
17 to you? What are the precise words he used to
18 allow you to come to that conclusion?

19 I put it to you, Mrs. Girvan, you
20 can't tell us --

21 MS GIRVAN: I can't give you --

22 ME EDWARDH: -- because you
23 destroyed your notes.

24 MS GIRVAN: I don't know that I
25 even wrote it down.

1 MS EDWARDH: If it was written
2 down, those notes don't exist today.

3 MS GIRVAN: That's correct.

4 MS EDWARDH: And the next time you
5 revisit the issue of whether Mr. Arar said he
6 moved, or was going for a long period in Tunisia
7 to deal with his father-in-law, or whatever he
8 said, the next time you revisit that is over a
9 year later?

10 MS GIRVAN: Correct.

11 MS EDWARDH: And you construct it
12 from memory?

13 MS GIRVAN: Right.

14 MS EDWARDH: And it may be not
15 just --

16 MS GIRVAN: I think.

17 MS EDWARDH: I am sorry?

18 MS GIRVAN: I think, because I
19 don't remember.

20 MS EDWARDH: Well, what else would
21 you construct it from? You have just said to us
22 that when the records came to you, your
23 handwritten notes were not in them? When you
24 began to participate in the chronology, you didn't
25 have those notes.

1 MS GIRVAN: Right.

2 MS EDWARDH: Right.

3 MS GIRVAN: I am going over the
4 notes that I have and -- yeah.

5 MS EDWARDH: I am confused.

6 MS GIRVAN: I am going over the
7 CAMANT notes.

8 MS EDWARDH: Okay. Thank you.

9 Then sometime between November the
10 3rd and when the CAMANT notes are produced, you
11 write what we have referred to as a -- I am sorry.
12 Sometime from when you deal with the chronology on
13 November 3rd and when all these documents are
14 pulled off the computer six months later, you
15 write the memorandum we find at page 808 -- I am
16 sorry, tab 808.

17 And I take it from your answers to
18 Commission counsel, despite his invitation to
19 suggest that this document was produced on
20 November 3rd, you cannot say it was produced on
21 November 3rd and/or that you even sent this?

22 MS GIRVAN: Just a second. I am
23 not sure if I am with you yet.

24 MS EDWARDH: Yes, tab 808.

25 MS GIRVAN: Yes, this note.

1 MS EDWARDH: Yes. You can't say
2 when this was, in fact, created by you?

3 MS GIRVAN: No.

4 MS EDWARDH: And certainly you
5 will agree with me, Ms Girvan, that not only can
6 you not say when you created it, in no other
7 document that you have been the author of do you
8 say Mr. Arar told you he moved to Tunisia?

9 MS GIRVAN: I think that's
10 probably correct. I think it only shows up here.

11 MS EDWARDH: In this document.

12 And when you were asked by
13 Commission counsel why would you have not put that
14 in the original CAMANT note that you produced on
15 October 3rd, 2002, you said because these matters
16 were merely contextual?

17 MS GIRVAN: Yes, I wouldn't have
18 found it significant.

19 MS EDWARDH: I am going to suggest
20 to you that, in fact, in delivering consular
21 services, it is wrong to say that the issue of
22 residence isn't merely contextual; it is a matter
23 that in the ordinary course you would inquire
24 about?

25 MS GIRVAN: Well, all I can say to

1 that is to the level I normally inquire about it,
2 he was resident in Tunisia. And that's the only
3 context I would need it in.

4 My concern is whether a Canadian
5 is a Canadian. It doesn't matter where he lives.
6 It doesn't matter if he is travelling through on
7 his way to some other place. It does not matter
8 to me.

9 I realize that it may matter to
10 you, but it didn't matter to me at the time --

11 MS EDWARDH: I am not talking
12 about mattering to me. I am talking about
13 mattering to the factors that one would list and
14 want to know about in any consular interview:
15 "Sir, are you a Canadian citizen?" "Yes." "Were
16 you travelling under a Canadian passport?" "Yes."
17 "Are you a resident of Canada?" "Yes."

18 Those are three inquiries that
19 most consular representatives would make.

20 MS GIRVAN: I can't say that
21 that's true. In fact, my main questions are: Are
22 you a Canadian citizen? If you are travelling on
23 a Canadian passport, that will come up. Mainly it
24 is: "Are you a Canadian citizen?" That is the
25 question.

1 If they are dual citizens,
2 certainly I would be very happy to know that they
3 were travelling on their Canadian passport. But
4 if Mr. Arar had been travelling on a Syrian
5 passport, I would have offered him consular
6 services exactly the same way because a Canadian
7 is a Canadian.

8 MS EDWARDH: That's one of the
9 points, though. If he is a dual citizen --

10 MS GIRVAN: Mm-hmm.

11 ME EDWARDH: -- one of the
12 questions you want to know is whether or not he is
13 also resident in the country of his other
14 nationality?

15 MS GIRVAN: It was very clear to
16 me, from Mr. Arar's description, that he had left
17 Syria. That I don't think I wrote in the notes
18 earlier. But that he left Syria in his teens and
19 moved to Canada --

20 MS EDWARDH: He tells you --

21 MS GIRVAN: Yes.

22 MS EDWARDH: -- and you record it.

23 MS GIRVAN: Did I record it?

24 MS EDWARDH: Yes, that he hasn't
25 been in Syria since he was 17.

1 MS GIRVAN: Right.

2 MS EDWARDH: I'm going to suggest
3 to you that in retrospect, what was going on here
4 for you was you became aware, just because of your
5 general following of Mr. Arar's case, that the
6 leaks that were being made by members of the
7 government had resulted in press stories. The
8 first one that I can find is on November 8th,
9 whereby the intelligence or policing -- I guess
10 this is an RCMP leak, it's alleged, by Ms O'Neill;
11 that one of the things that is said is that:

12 "Mr. Arar had disappeared,
13 says a security source, a
14 notion Ms Pither says is
15 outlandish. Mr. Arar was in
16 Canada for the next 6 months
17 and could have been contacted
18 with a phone call. When an
19 RCMP investigator knocked on
20 his door a couple of weeks
21 later, he found Mr. Arar and
22 his family were gone.
23 Neighbours said he and his
24 family had held a garage
25 sale, packed and moved..."

1 So you knew one of the police
2 allegations was that he had left.

3 MS GIRVAN: No, I didn't see that
4 report.

5 MS EDWARDH: You never saw the
6 Juliet O'Neill article.

7 MS GIRVAN: I heard about her
8 being arrested. I was in New York at the time and
9 I didn't follow the article. So I did not learn
10 more about Mr. Arar's case from that.

11 MS EDWARDH: Because this was an
12 extremely well-publicized event.

13 MS GIRVAN: Yes.

14 MS EDWARDH: Not only the
15 publication of this article but her subsequent
16 involvement in a search conducted at her premises.

17 MS GIRVAN: I was very aware of
18 the search of her premises and the controversy.

19 MS EDWARDH: I'm going to suggest
20 to you just one last thing.

21 As you struggled to deal with
22 these issues in your own mind, of reconstructing
23 what happened, and when you were asked to do so,
24 both with the chronology and perhaps thereafter,
25 that it may well have been the case that some of

1 these facts have been collected in your memory --
2 it happens often with any ordinary person -- and
3 that without having written it clearly in CAMANT,
4 you may be mistaken today that in that brief
5 interview with Mr. Arar, he said he had "moved?"

6 I'm just putting it to you that it
7 is a reasonable possibility that Mr. Arar did not
8 say to you that he had moved.

9 MS GIRVAN: It is a possibility,
10 but I don't think that that's the case. I do --

11 MS EDWARDH: Certainly you can
12 offer us no explanation for writing that he had --
13 you clarified his residency for writing that in
14 October and not writing that he was a resident of
15 Tunisia.

16 You have no explanation of that.

17 MS GIRVAN: I'm sorry, say that
18 again.

19 MS EDWARDH: You have no
20 explanation for writing that you had clarified his
21 residency as Canada on October 9th, and not
22 saying, in the CAMANT note, he was a resident of
23 Tunisia.

24 MS GIRVAN: I think the difficulty
25 is our definition of "resident". All I can tell

1 you is that I remember, after seeing Mr. Arar and
2 I remembered at some point, probably even much
3 earlier, that he had talked of moving to Tunisia;
4 that his wife wanted to live closer to her father.
5 It seems to me that he told me that he had sold
6 the townhouse or something that they lived in.

7 But I didn't find that any problem
8 or any difficulty; and that he was moving back,
9 looking for work, and that he had told his
10 wife --I remember it very well. It was as if his
11 wife would have liked to have stayed but that he
12 had explained to her that it was difficult to get
13 work in Tunis, and that he would have to look in
14 Europe or in Canada. He did tell me that. And he
15 was looking at opportunities. And he had come
16 back to Canada to see about jobs.

17 That is -- I still would consider
18 him a long-term resident of Canada, but he clearly
19 was undecided as to where he was living.

20 MS EDWARDH: Well, I think you
21 have answered the question, but you will agree
22 that nothing in your original notes reflect that
23 conversation.

24 MS GIRVAN: Yes.

25 THE COMMISSIONER: Do you want to

1 take a break, Ms Edwardh?

2 MS EDWARDH: We have been going
3 for an hour and a half. Would that be convenient?
4 I'm going to shift to another area.

5 THE COMMISSIONER: Yes. We will
6 take a break for 15 minutes.

7 THE REGISTRAR: Veuillez-vous
8 lever. Please stand.

9 --- Upon recessing at 2:33 p.m./
10 Suspension à 14 h 33

11 --- Upon resuming at 2:48 p.m. /
12 Reprise à 14 h 48

13 THE REGISTRAR: Please be seated.
14 Veuillez-vous asseoir.

15 THE COMMISSIONER: Ms Edwardh.

16 MS EDWARDH: Thank you very much.
17 Just one last comment in this
18 area.

19 Ms Girvan, you told the
20 Commissioner just a moment or two ago your
21 conclusion that Mr. Arar told you he had "moved"
22 to Tunisia, and you listed some factors. One of
23 the things you said was he told you he sold his
24 townhouse.

25 MS GIRVAN: I couldn't remember if

1 it was a house or townhouse, but I had the
2 impression that he had sold his place.

3 MS EDWARDH: And if I told you,
4 Mrs. Girvan, that it's common knowledge that
5 Mr. Arar didn't own a house or a townhouse and he
6 didn't sell any such place, can you explain to the
7 Commissioner why you told him that Mr. Arar told
8 you he sold it?

9 You must be mistaken; correct?

10 MS GIRVAN: I'm reading what I
11 wrote at that time. But if he didn't have a
12 house, of course I'm mistaken.

13 MS EDWARDH: Well, you didn't
14 write it, even between November --

15 MS GIRVAN: No.

16 MS EDWARDH: -- and today's date.
17 There's nothing there that says he sold his
18 premises.

19 MS GIRVAN: It's in this message.
20 Is that the only place? Is that what you are
21 saying?

22 MS EDWARDH: You look there, too.

23 MS GIRVAN: Given up, sorry.

24 MS EDWARDH: So he never said to
25 you --

1 MS GIRVAN: No.

2 MS EDWARDH: You are mistaken.
3 But you swore that under oath today; correct?

4 MS GIRVAN: Well, I wasn't trying
5 to mislead you.

6 MS EDWARDH: I understand your
7 position. But we can agree that you were
8 mistaken?

9 MS GIRVAN: Yes.

10 MS EDWARDH: I want to turn
11 briefly to the other area of legal briefing. You
12 canvassed this with Mr. David if you want to refer
13 to the documents. I have a couple of questions I
14 would like to ask.

15 You spent, as did others in the
16 United States, spent some time trying to arrange
17 contact with legal counsel within INS to
18 understand what had happened to Mr. Arar?

19 MS GIRVAN: You are referring to
20 when Mr. Arar asked me to contact Mr. Watt to --

21 MS EDWARDH: No. I'm referring to
22 efforts that were made by you and others on behalf
23 of the consular services to understand what had
24 happened or what the legal framework was in
25 respect of --

1 MS GIRVAN: To the deportation to
2 Syria?

3 MS EDWARDH: -- the deportation.

4 MS GIRVAN: Yes.

5 MS EDWARDH: Indeed there are
6 discussions -- we can go to them -- about what
7 kind of questions you might ask. I think
8 Mr. Pardy contributes to the discussions and other
9 people do, to a list of issues that you might want
10 to explore when you have your meeting. And I
11 think it's either November 15th or November 19th,
12 I'm not sure --

13 MS GIRVAN: I have a telephone
14 call.

15 MS EDWARDH: Your telephone call.
16 And when you did have that
17 telephone call, you have characterized it as not
18 very useful. Right?

19 MS GIRVAN: It was just neutral,
20 in the sense that it didn't answer any other
21 questions.

22 MS EDWARDH: And that doesn't help
23 me very much in understanding what it was that was
24 said to you.

25 I understand you describing it as

1 really being a call that talked about the legal
2 structure of the decision or the principles of law
3 that were applicable in the decision, but that it
4 didn't relate specifically to Mr. Arar.

5 MS GIRVAN: That's correct.

6 MS EDWARDH: And were you told by
7 this person that as far as they were concerned,
8 that the U.S. government had the right to deport
9 Mr. Arar to Syria because they found it consistent
10 with their national security interests?

11 MS GIRVAN: I actually can't
12 remember what he told me at that time.

13 MS EDWARDH: Do you remember this
14 person telling you that such a deportation was
15 lawful if the Government of Syria gave assurances?

16 MS GIRVAN: I don't remember that.
17 He did not discuss the Arar case at all.

18 MS EDWARDH: Leaving aside then
19 the specifics of Arar, did this official explain
20 to you that the U.S. might consider itself in a
21 position to deport someone to a different nation
22 if they found it in their own national security
23 interests?

24 MS GIRVAN: I have read that
25 since, and I know that to be true, but I don't

1 remember what the gentleman with INS told me. I
2 really don't remember any of that. And unless I
3 wrote it down, I can't tell you what took place in
4 the conversation; I'm sorry.

5 MS EDWARDH: I take it then that
6 even if you did write it down at the time, you
7 don't have those notes today?

8 MS GIRVAN: I don't have any notes
9 from that period, no.

10 MS EDWARDH: And it's fair to say
11 that if you were having what you considered, at
12 least when you started the telephone
13 conversation -- it was an important call. You
14 hoped to get clarification.

15 MS GIRVAN: I --

16 MS EDWARDH: You would have had
17 pen and pencil in hand.

18 MS GIRVAN: I would have related
19 it possibly back to Mr. Pardy because that's who I
20 was making the call on behalf of.

21 So perhaps Mr. Pardy would
22 remember more of what I actually got from him.
23 But I was just relaying information back to
24 Ottawa.

25 MS EDWARDH: Right. I want to

1 understand. You understood that Mr. Pardy
2 believed this to be an important inquiry. He was
3 trying to find out what happened to Mr. Arar.

4 MS GIRVAN: He didn't make it an
5 urgent or important thing in the sense of -- he
6 just said, "See if you can find out. See if they
7 will tell you anything."

8 I imagine he was using other means
9 to also learn the same thing, but this was one
10 thing that he tasked me with. And I did it to the
11 best of my ability.

12 MS EDWARDH: And it would be fair
13 to say that when you had this conversation, hoping
14 to get some meaningful information, because that's
15 what you hoped, you would have had pen and paper
16 in hand in case the person said something that was
17 pertinent to your inquiry?

18 MS GIRVAN: I would think so.

19 MS EDWARDH: And it's your
20 evidence today that you have no memory of what the
21 person said?

22 MS GIRVAN: That's correct.

23 MS EDWARDH: And to the best of
24 your recollection, no notes of what this person
25 said?

1 MS GIRVAN: That's correct.

2 MS EDWARDH: I want to understand
3 another aspect of the involvement of the Centre
4 for Constitutional Rights and your responses to
5 them, and I'm going to list them. And if you want
6 to go to any document, we can.

7 Certainly there was a concern
8 expressed in one note that if the Centre of
9 Constitutional Rights was going to act for any
10 third parties or planned to sue the U.S.
11 Government, that there must be care taken with the
12 information they received.

13 Do you recall that.

14 THE WITNESS: I don't recall who
15 wrote it.

16 MS EDWARDH: You recall that as
17 being one of the views at the time?

18 MS GIRVAN: I think perhaps we
19 should look at the notes.

20 MS EDWARDH: I want to put four
21 propositions to you. We will go through each of
22 them quickly.

23 MS GIRVAN: Okay.

24 MS EDWARDH: That the Centre for
25 Constitutional Rights contacted you and other

1 members of the government and said: Can we make
2 calls to the Canadian Embassy in Damascus? And
3 they were discouraged from doing so.

4 MS GIRVAN: I think there is one
5 note in which I refer the question to Canada, and
6 Canada responds, and I refer back saying it might
7 not be a good time but to speak with the officer
8 in Canada.

9 MS EDWARDH: We will come to that
10 note then.

11 And then they ask you about
12 whether or not they should attend in Damascus, and
13 they are discouraged from attending.

14 MS GIRVAN: And I'm not sure if
15 I'm party to that or not.

16 MS EDWARDH: Let's take a look at
17 it. Let's start with note 118.

18 THE COMMISSIONER: Tab 118?

19 MS EDWARDH: I'm sorry, tab 118,
20 Mr. Commissioner.

21 This is a note entered into the
22 CAMANT system.

23 MS GIRVAN: Mm-hmm.

24 MS EDWARDH: It is entered by a
25 person known as Lawson?

1 MS GIRVAN: That is correct.

2 MS EDWARDH: Can you describe who
3 Lawson is, to the best of your knowledge?

4 MS GIRVAN: I believe it was Janis
5 Lawson, who would have been working in Mr. Pardy's
6 office at that time.

7 MS EDWARDH: And they talk about
8 the fact that -- in fact it's now a more formal
9 relationship with Mr. Watt, right, Steven Watt?

10 And then there's a reference I
11 wanted to ask you about:

12 "If there is a third party
13 other than Mr. Arar's
14 attorney and they plan to
15 bring lawsuits in the U.S. we
16 will have to be very careful
17 of info provided."

18 That is copied to you, in effect.

19 MS GIRVAN: Yes, copied to me.

20 MS EDWARDH: And of course you
21 knew --

22 MS GIRVAN: In fact, you have
23 Janis Lawson's name at the bottom.

24 MS EDWARDH: Yes. But you knew
25 that the Centre for Constitutional Rights was now

1 getting more involved through the Arar family?

2 MS GIRVAN: Yes. Well, in fact, I
3 had had a call, I think -- oh, no, I had not had
4 the call. I may not know yet, in fact, because,
5 you see, I'm not in the office until the 22nd.

6 MS EDWARDH: Right. You are in
7 fact on holiday?

8 MS GIRVAN: That's correct. So I
9 haven't been back to the office yet.

10 MS EDWARDH: So you have gone from
11 your visit to Mr. Arar. You are in New York for a
12 period of time, and you then go to Washington on
13 the 9th, I think you said. On the 9th, 10th, and
14 11th you are in Washington, and then you are gone
15 on holidays --

16 MS GIRVAN: To Vancouver, that's
17 correct. Then I come back on the 22nd, I believe.

18 MS EDWARDH: So the general
19 concern here about lawsuits in the U.S. and the
20 need to be very careful of providing information,
21 is that one you understood in your dealings with
22 Mr. Watt?

23 MS GIRVAN: If we go to a note
24 that I wrote which is perhaps on the 22nd --

25 MS EDWARDH: That's note number

1 96, tab 126. Is that the one you are referring
2 to?

3 MS GIRVAN: Unfortunately, it is
4 the new book I guess. Number 125 is the last one
5 in here. Thank you.

6 At 126, this is when I learned,
7 when I'm called by Mr. Watt on the 22nd. So I
8 probably haven't read the notes before.

9 But on the 22nd he explains what
10 they are doing on behalf of Mr. Arar.

11 MS EDWARDH: Right. Then go down
12 to the next paragraph:

13 "An assistant at the Centre,
14 Janice ..."

15 And we have seen her before.

16 "... then called to ask if
17 there was any more
18 information or if there were
19 numbers in Syria that she
20 could use to contact someone.
21 I recommended ..."

22 And that "I" is you?

23 MS GIRVAN: Yes.

24 MS EDWARDH: "... I recommended
25 that she not contact the

1 Embassy in Syria, but did
2 give her the name and phone
3 number of Myra..."

4 Why, Ms Girvan, would you
5 recommend that the Centre for Constitutional
6 Rights not contact the Canadian Embassy in Syria?

7 MS GIRVAN: Of course they could,
8 but I would have recommended calling the desk
9 officer for the Middle East. First of all, it
10 would be within -- you wouldn't be calling on an
11 insecure line and they could talk to Myra, and
12 Myra could inform them as to the best time and who
13 to speak to in Damascus. Myra is the expert on
14 the area.

15 That is the only reason.

16 MS EDWARDH: So your concern about
17 communication directly was based on the fact that
18 secure communication could take place if the
19 Centre went through Ottawa as opposed to open
20 communication --

21 MS GIRVAN: Even aside from that,
22 I would just have recommended call Myra because
23 it's not me. Don't talk to me, and I shouldn't be
24 giving information out; it should be Myra. It's
25 not my case any more.

1 MS EDWARDH: I'm not talking about
2 you giving information out. This is a question of
3 the Centre having access to someone in Damascus
4 who could provide them with information.

5 MS GIRVAN: Yes, but she is asking
6 me for the information, and I'm suggesting she
7 speak to Myra.

8 MS EDWARDH: Well, you are also
9 suggesting that it would be preferable if she
10 dealt with Ottawa rather than Damascus, I am going
11 to suggest, anyway.

12 Let's take a look at the other
13 note, which is Note 168.

14 MS GIRVAN: Mm-hmm.

15 MS EDWARDH: You are also
16 communicating this to the Centre for
17 Constitutional Rights? You have had a
18 conversation with Myra?

19 MS GIRVAN: Mm-hmm.

20 MS EDWARDH: And you say -- this
21 is when the issue is raised about whether someone
22 from the Centre should actually go to Damascus.

23 You say to her, after speaking
24 with Myra:

25 "... we would not recommend

1 that she go to Damascus at
2 this time. The Syrians have
3 been more than usually open
4 to our access and we should
5 avoid upsetting this balance
6 at the moment."

7 Do you see that?

8 MS GIRVAN: Yes.

9 MS EDWARDH: Then you ask whether
10 or not you can mention that there is a contact
11 with a Syrian lawyer.

12 But I take it you have no
13 knowledge of whether that Syrian lawyer has any
14 access to Mr. Arar?

15 MS GIRVAN: I don't know, no.

16 MS EDWARDH: But why would you
17 recommend that the Centre for Constitutional
18 Rights not go because of some balance that's been
19 obtained by the Government of Canada? That just
20 means that they have had some access to Mr. Arar.

21 MS GIRVAN: I'm only quoting Myra
22 here. This is not my decision.

23 MS EDWARDH: I see. So you are
24 just transmitting the information?

25 MS GIRVAN: Exactly.

1 MS EDWARDH: Do you understand it?
2 Do you understand why your colleague would be
3 giving this information?

4 MS GIRVAN: Well, I understand
5 that in all cases of consular -- for example, I've
6 seen many cases where it can be very delicate, and
7 so I would understand that they would be looking
8 to be careful. You know, when, who would go in,
9 what would happen, who would make the contacts.

10 I understand that it was delicate.
11 One wanted to keep having access to Mr. Arar. But
12 I wouldn't have gone further than that.

13 Generally speaking I would be
14 pretty busy on my own cases and I would just be
15 doing these small things to do with the Arar case
16 at this point really as more of a messenger. I
17 wouldn't have to know very much.

18 But I am the person that
19 Constitutional Rights tends to phone because they
20 have been in touch with me before.

21 MS EDWARDH: Yes, I understand
22 that.

23 MS GIRVAN: It says after speaking
24 with Myra.

25 MS EDWARDH: What you are really

1 doing here and you are saying is you are simply
2 transmitting the instruction from Myra?

3 MS GIRVAN: That's right.

4 MS EDWARDH: I will take you to
5 another tab.

6 MS GIRVAN: Sure.

7 MS EDWARDH: I want to go to tab
8 197, and page 2.

9 MS GIRVAN: Page 2?

10 MS EDWARDH: Yes. Can you just
11 assist us in explaining -- I always find these
12 groupings of e-mails confusing.

13 MS GIRVAN: Me, too.

14 MS EDWARDH: Well, that's good.

15 --- Laughter / Rires

16 MS EDWARDH: Can you explain
17 whether or not you would have got some, none, or
18 all of these e-mails?

19 MS GIRVAN: You are talking about
20 the ones on page 2?

21 MS EDWARDH: Yes.

22 MS GIRVAN: Well, it seems that I
23 wrote the one at the top.

24 MS EDWARDH: Yes. That's the only
25 one we know that -- that's the only one I can see,

1 if we go to the --

2 MS GIRVAN: The one on the bottom
3 looks more like a news report.

4 MS EDWARDH: Yes. And the one on
5 the first page.

6 Did you get any of those?

7 MS GIRVAN: Sorry, the first page?

8 MS EDWARDH: Well, the first page
9 of the tab is the only way I can describe it,
10 sorry.

11 MS GIRVAN: That's all right.

12 I don't believe so, other than
13 this one down here on the bottom.

14 MS EDWARDH: At the bottom? So
15 you would have got that. And that makes sense
16 because those are the issues that you are trying
17 to develop for your telephone communication to get
18 advice about what happened to Mr. Arar; right?

19 MS GIRVAN: Yes. I'm not sure,
20 but it might have come from the immigration
21 officer in Washington. But I'm not sure.

22 MS EDWARDH: But how does that get
23 attached to that message?

24 MS GIRVAN: We would have to ask
25 Mrs. Cyr. There seems to be some effort to put

1 e-mails into the file but I don't know why or whom
2 or by whom, and I wasn't even reading them.

3 MS EDWARDH: All right. I want to
4 take you to the e-mail that you sent to Mr. Pardy,
5 copied to William Sheppit.

6 And Mr. Sheppit, again, who is he?

7 MS GIRVAN: Where are you?

8 MS EDWARDH: I'm on the second
9 page, the one that is clearly written by you.

10 MS GIRVAN: Sheppit is the head of
11 immigration in Washington.

12 MS EDWARDH: And you have
13 described Andre Laporte.

14 MS GIRVAN: He is my boss in New
15 York.

16 MS EDWARDH: And the subject of
17 this is the person to whom you are --

18 MS GIRVAN: Mm-hmm.

19 MS EDWARDH: I guess it is the
20 person you are about to have the phone call with.

21 MS GIRVAN: Yes.

22 MS EDWARDH: I want to go down to
23 the third paragraph:

24 "If ... is able to discuss
25 the specific case of Arar,

1 and if it seems appropriate,
2 I will mention that we did
3 worry that Arar might have
4 been arrested on the basis of
5 information obtained through
6 Canada ..."

7 Let me stop there.

8 Who is the "we"?

9 MS GIRVAN: I don't know. I'm
10 writing it to whom -- to Gar. It may be that Gar
11 has told me that and has asked me to ask them.

12 MS EDWARDH: Well, it's really not
13 so much to ask them as to mention to them that you
14 had this concern; right?

15 Or were you to ask him?

16 MS GIRVAN: I think the "we" is
17 possibly Gar.

18 MS EDWARDH: Let's go to then the
19 substance of the concern.

20 "... that Arar might have
21 been arrested on the basis of
22 information obtained through
23 Canada..."

24 What information did you have,
25 when you wrote this e-mail, about that fact?

1 MS GIRVAN: I don't know that it
2 was a fact. I really don't remember the context
3 of this. I think maybe you would have to ask
4 Mr. Pardy if he remembers.

5 MS EDWARDH: So you have no memory
6 of the discussions you had with Mr. Pardy or
7 anyone else about the concern that the Canadian
8 information may be involved?

9 MS GIRVAN: No. It wasn't ...

10 MS EDWARDH: But -- let's go on:

11 "... but that we have
12 approached the Canadian
13 authorities and they have no
14 information supporting the
15 charge of his being a member
16 of Al Qaeda ..."

17 MS GIRVAN: That's why I'm
18 suggesting that the "we" must be Gar, because I
19 haven't approached any Canadian authorities.

20 MS EDWARDH: Did you understand
21 when you wrote this, proposing that this is
22 something you would say to counsel or the office
23 of legal counsel INS, that when you wrote that,
24 what was your understanding of who had been
25 approached?

1 MS GIRVAN: Just a sec. Say that
2 again?

3 MS EDWARDH: What was your
4 understanding about who had been approached?

5 MS GIRVAN: Canadian authorities.

6 MS EDWARDH: Which Canadian
7 authorities?

8 MS GIRVAN: I don't know.

9 MS EDWARDH: Do you have any --

10 MS GIRVAN: I remember -- there's
11 another note, if we go back, on the 9th, I think,
12 of October, where Gar says that he has been in
13 touch with Canadian authorities. I did not know
14 which ones they were and I did not know -- I
15 wouldn't have known either here.

16 MS EDWARDH: So while you are
17 going forward to have this interview with counsel
18 for -- or Office of the Legal Counsel in INS and
19 you may mention this fact to him, because that's
20 what you are talking about, whether you are going
21 to mention it, I take it you have no idea who
22 approached Canadian authorities or what
23 authorities were involved?

24 You don't remember today?

25 MS GIRVAN: I don't remember

1 today; I'm sorry.

2 MS EDWARDH: And:

3 "... they have no information
4 supporting the charge of his
5 being a member of Al
6 Qaeda..."

7 And that would have been
8 information you got from Mr. Pardy. Is that what
9 you are saying?

10 MS GIRVAN: I don't remember, but
11 I think that's the most likely explanation.

12 MS EDWARDH: Is there anyone else
13 you were in contact with who would have made it or
14 could have given you that information?

15 MS GIRVAN: It seems to me it
16 would be more likely that Mr. Pardy or maybe
17 conceivably Mr. Sheppit but I think more likely
18 Mr. Pardy. But I can't be positive. I just know
19 that I didn't know.

20 MS EDWARDH: So your view is you
21 don't know what authorities were contacted by
22 whom?

23 MS GIRVAN: Much later, very, very
24 recently, I know more about contacts, but I don't
25 know anything at this time.

1 MS EDWARDH: Are you able to
2 disclose what you now know from a review of
3 whatever you --

4 MS GIRVAN: I don't even know
5 anything specific now. Not on this. I couldn't
6 tell you who these are. That's right.

7 MS EDWARDH: Okay. One of the
8 things I just want to spend a moment on, that I
9 find of concern, when you visit a detainee, you
10 tell the detainee that your visit is embedded with
11 the trust of confidence.

12 Let me explain what I mean.

13 What you are talking to them about
14 and what they say to you are confidential, and
15 that you will tell no one or disclose to no one
16 what they say unless they specifically identify
17 and authorize the persons to whom you can speak?

18 MS GIRVAN: No one outside the
19 consular order.

20 MS EDWARDH: Right.

21 MS GIRVAN: Correct.

22 MS EDWARDH: No one outside the
23 consular order.

24 So although -- you don't tell that
25 to them, but essentially what you are saying is:

1 "I may have to disclose to my boss or his boss,
2 but we are providing consular services in
3 confidence. You can trust the confidence of
4 consular services." That's correct?

5 MS GIRVAN: Yes, that's correct.

6 MS EDWARDH: Well, one of the
7 puzzling things is that if one looks at the
8 consular services provided to Mr. Arar, they are
9 nothing but a sieve. Even the RCMP read the
10 consular cards. Did you know that?

11 MS GIRVAN: Not at the time, I
12 certainly didn't. I don't actually know it now.

13 MS EDWARDH: Well, we'll come to
14 the Garvie report.

15 But if I were to tell you that the
16 Garvie report says that when Inspector Roy
17 attended A-OCANADA on October 8 that he tells them
18 that Arar might be deported to Syria, and the
19 source of that, he believes, is probably the
20 consular visit card. Does that shock you?

21 MS GIRVAN: It would. What is a
22 consular visit card, though?

23 MS EDWARDH: Well, we'll find out
24 in more detail. I want you to --

25 MS GIRVAN: I am shocked. I don't

1 believe that the RCMP has access to CAMANT files.

2 MS EDWARDH: And so you would, as
3 a person who provides this consular service, be
4 shocked if the contents of your communication with
5 Mr. Arar went beyond the consular division of
6 DFAIT?

7 MS GIRVAN: Yes.

8 MS EDWARDH: Because it would
9 betray what you tell detainees?

10 MS GIRVAN: There may be rules
11 under which one can that I'm not aware of, but on
12 the basic ground, unless, though, for example, the
13 one rule I can think of is that for the good of a
14 person, you sometimes can break that trust.

15 MS EDWARDH: Of course.

16 MS GIRVAN: But in general, the
17 trust is there. We do not share information. I
18 keep my files closed to other people.

19 MS EDWARDH: So if I were -- by
20 "good of another person," I'm going to suggest to
21 you that that principle runs through many
22 professional services. If I have a client who's
23 going to cause imminent harm to another person --

24 MS GIRVAN: Or himself.

25 MS EDWARDH: -- or himself, or a

1 psychiatrist has a patient who is going to cause
2 imminent harm, this kind of general principle of
3 protecting third parties from imminent danger
4 allows one, on some occasions, to breach the trust
5 of confidence.

6 But we're not talking about that
7 with Mr. Arar, are we?

8 MS GIRVAN: I think we're talking
9 about the privacy laws.

10 MS EDWARDH: So to the best of
11 your knowledge, no one outside of the consular
12 line of -- or chain of command had any right,
13 under any circumstances, to have access to the
14 contents of your consular visits?

15 MS GIRVAN: Within my knowledge, I
16 would say no.

17 As I say, the only thing I can
18 think of is there might be some other rule for --
19 other than that one I've just given you that my
20 exempt it but I'm not aware of it.

21 MS EDWARDH: You're not aware of
22 that.

23 MS GIRVAN: No.

24 MS EDWARDH: And no one told
25 you --

1 MS GIRVAN: No.

2 MS EDWARDH: -- that they were
3 going to take your information and disseminate it
4 to intelligence or policing agencies.

5 MS GIRVAN: No, absolutely not.

6 MS EDWARDH: So, in your world,
7 you consider yourself working quite separate from
8 intelligence and policing services?

9 MS GIRVAN: Yes.

10 MS EDWARDH: And that is why you
11 answered to Mr. David that you would not expect
12 the RCMP to call you if they were aware that a
13 Canadian had been detained?

14 MS GIRVAN: They have never done
15 so.

16 --- Laughter / Rires

17 MS EDWARDH: And certainly then,
18 to the best of your knowledge, should parts of the
19 department, branches of the Department of Foreign
20 Affairs, acquire information about a detainee,
21 it's your understanding they have no duty to pass
22 it to the consular division?

23 In other words, you have a group
24 in there called ISD and ISI. You don't know much
25 or you didn't know much about them at the time,

1 did you?

2 MS GIRVAN: No.

3 MS EDWARDH: I think you even said
4 to Mr. David, you hadn't heard of them at the
5 time.

6 MS GIRVAN: You know, I knew there
7 was an IS-something downstairs, but I had never
8 actually had direct contact, that I remember, with
9 them.

10 MS EDWARDH: You didn't know their
11 job was to move intelligence around?

12 MS GIRVAN: I must have known in
13 some general way that there must be -- that there
14 was an intelligence section, I surely did, and
15 there was a global security section, but I was not
16 involved with them.

17 MS EDWARDH: But it never dawned
18 on you that your information from consular visits
19 could be disseminated by ISI or ISD?

20 MS GIRVAN: Well, since I didn't
21 think about them, I wouldn't be thinking about
22 what they'd be doing.

23 MS EDWARDH: But given the
24 understanding of your duties and the confidence
25 you had.

1 MS GIRVAN: Any sharing of any
2 information from those files would have had to
3 have been made at a higher level than I would know
4 about.

5 MS EDWARDH: So it's certainly
6 your understanding that ISI and ISD don't have any
7 duties to alert the consular services branch of
8 the Department of Foreign Affairs that someone may
9 be detained?

10 MS GIRVAN: I think, you know, you
11 should really be asking someone else about the
12 duties of ISD --

13 MS EDWARDH: I will do that.

14 THE WITNESS: -- because I don't
15 know them at all, so it would be incorrect --

16 MS EDWARDH: Okay. I'll leave
17 that, and I will ask -- but you've -- I think
18 you've answered the question by saying you've
19 never had a call from either the Mounties or other
20 police agency in Canada, or from ISI or ISD, to
21 say: "There is a Canadian detained you should go
22 and see"?

23 MS GIRVAN: No, I have not.

24 MS EDWARDH: Just two brief and
25 last areas.

1 At tab 793, and this is in one of
2 the very late volumes, we have a Memorandum of
3 Understanding signed by Minister Graham.

4 MS GIRVAN: Thank you.

5 MS EDWARDH: And are you generally
6 familiar with it?

7 MS GIRVAN: I'm sorry, with...

8 MS EDWARDH: The Memorandum of
9 Understanding signed -- let's just open it up.
10 It's 793.

11 MS GIRVAN: 2004.

12 MS EDWARDH: Do you have that?
13 Dated January 13, 2004?

14 MS GIRVAN: I have it here.

15 MS EDWARDH: Are you generally
16 familiar with it?

17 MS GIRVAN: Not really. I just
18 heard about it more than actually reading it. I
19 knew that it had taken place, you know, that they
20 had had -- because it was sort of putting into
21 words what I believed already existed in many
22 ways.

23 MS EDWARDH: So when this
24 Memorandum of Understanding was signed on
25 January 13, 2004, I take it what you're saying, Ms

1 Girvan, is you were not specifically briefed on
2 it?

3 MS GIRVAN: I wouldn't have been
4 specifically briefed. But I would have -- you
5 know, these things generally are filed and sent
6 out and, as we have time, we read them.

7 MS EDWARDH: It relates -- can we
8 agree that it relates to consular services?

9 MS GIRVAN: Mm-hmm.

10 MS EDWARDH: And perhaps you
11 cannot speak to it in any detail, but can you
12 agree with me that all this does is to provide a
13 framework to guarantee that there will be some
14 "consultation"?

15 MS GIRVAN: What I remember is
16 that the -- as there had been no precedent for the
17 removal of a Canadian citizen to the other country
18 of citizenship, when that did occur, the Minister
19 of Foreign Affairs -- it was so exceptional that
20 the Minister of Foreign Affairs met with the U.S.
21 Ambassador to protest that deportation and that
22 ongoing discussions after that led to -- this is
23 my understanding -- led to an agreement that in
24 future, even though the United States maintained
25 that they had the right to do what they had done,

1 that in future, they would refer and consult with
2 Canada and so would Canada with the United States.

3 MS EDWARDH: If the situation was
4 turned into the opposite --

5 MS GIRVAN: That's correct, yes.

6 MS EDWARDH: And I take it you
7 will agree with me that there is nothing in this
8 agreement that goes beyond merely saying that
9 there will be notice and potentially a
10 consultation?

11 MS GIRVAN: Let me just --

12 MS EDWARDH: Should a circumstance
13 like Mr. Arar's arise again?

14 MS GIRVAN: Consultations will
15 occur.

16 MS EDWARDH: Right. So notice and
17 consultations.

18 MS GIRVAN: So it is a requirement
19 to consult.

20 MS EDWARDH: Well, let's be
21 careful with the word "requirement".

22 MS GIRVAN: Oh.

23 MS EDWARDH: Because, am I correct
24 that, as a Memorandum of Understanding, that there
25 is nothing in this document that would in any way

1 alter or change the legal rights of either party.
2 That's what is understood?

3 MS ROUSSEL: Mr. Commissioner --

4 MS GIRVAN: I think you should
5 refer to DFAIT --

6 MS EDWARDH: All right.

7 MS GIRVAN: -- for the details on
8 that.

9 MS ROUSSEL: I was going to state
10 for the record that that's not one of the
11 documents under my understanding that we've been
12 referred to.

13 MS GIRVAN: No, I haven't seen it.

14 MS ROUSSEL: So Ms Girvan would
15 not have taken knowledge of this document --

16 THE COMMISSIONER: And there will
17 be others that will give evidence --

18

19 MS EDWARDH: All right. Thank
20 you.

21 It was not my understanding that I
22 was obliged to refer Ms Girvan to specific
23 documents though, but I know that my friend had
24 not taken her there.

25 But I want to ask just one general

1 question about it, if I could, and we'll see if my
2 friend disagrees.

3 In January of 2004, what position
4 did you hold? Were you still --

5 MS GIRVAN: I was still in
6 New York.

7 MS EDWARDH: You're still in
8 New York. And you were still one of the persons
9 providing consular services --

10 MS GIRVAN: Correct.

11 MS EDWARDH: -- to detainees?

12 MS GIRVAN: Mm-hmm.

13 MS EDWARDH: And beyond becoming
14 aware of this document, while you continued on
15 with the provision of consular services, was there
16 any framework communicated to you about the
17 significance that could be attached to this
18 document? What you would do? How you would
19 consult or participate in consultations if this
20 circumstance arose again?

21 MS GIRVAN: I can't remember, but
22 I would assume that it would be the same.

23 I would go to Ottawa and Ottawa
24 would inform me if there was any specific -- I
25 didn't have a case that touched on this area of

1 concern.

2 MS EDWARDH: But you weren't given
3 any specific instructions about the mechanism that
4 would be involved --

5 MS GIRVAN: I don't remember.

6 MS EDWARDH: You don't remember.

7 MS GIRVAN: No.

8 MS EDWARDH: And that's just in
9 January of 2004?

10 MS GIRVAN: Yes.

11 MS EDWARDH: One last question,
12 Ms Girvan. Turn to tab 528.

13 THE COMMISSIONER: Volume?

14 MS EDWARDH: That is volume 6.

15 This is more a result of
16 curiosity -- 528.

17 You're involved in this exchange,
18 Ms Girvan?

19 MS GIRVAN: This is a message from
20 Mr. Pardy, and he's saying that --

21 MS EDWARDH: To you?

22 MS GIRVAN: Yes, it's to me, with
23 info to Myra.

24 I believe that I had facilitated a
25 call between Mr. Pardy and Mr. Watt.

1 MS EDWARDH: Well, certainly
2 you're communicating -- you've also communicated
3 with Mr. Watt.

4 MS GIRVAN: This is not me
5 writing. This is Mr. Pardy writing.

6 MS EDWARDH:
7 "Maureen and I spoke to
8 Mr Watt August 21..."

9 MS GIRVAN: Yes.

10 MS EDWARDH: So you would have had
11 a telephone call as well?

12 MS GIRVAN: Yes. I would have
13 perhaps been on the phone. I don't recall if it
14 was the same call. Let's see.

15 MS EDWARDH: And there is a
16 reference to the lawsuit that the Centre for
17 Constitutional Rights is considering filing?

18 MS GIRVAN: Mm-hmm.

19 MS EDWARDH: And I'm puzzled by
20 this suggestion that's in the second paragraph.

21 "Action has not been filed
22 and Mr Watt was open to
23 suggestion that delay..."

24 And I assume that means delay of
25 the action.

1 "...until October was
2 entirely possible since their
3 action would be more credible
4 if Mr. Arar was available to
5 give testimony."

6 Do you see that?

7 MS GIRVAN: I do.

8 MS EDWARDH: And so this is
9 written August 22, 2003?

10 MS GIRVAN: Mm-hmm.

11 MS EDWARDH: And do you recall any
12 specific discussions, that it was expected that
13 Mr. Arar would be back by October?

14 MS GIRVAN: No, I'm sorry.

15 This is Mr. Pardy's conversation.
16 I think you should ask him about it.

17 MS EDWARDH: Fine. We'll do that.

18 MS GIRVAN: All right.

19 MS EDWARDH: Ms Girvan, thank you.
20 Those are my questions.

21 MS GIRVAN: Thank you.

22 THE COMMISSIONER: Ms Roussel?

23 MS ROUSSEL: Do I need to stand?

24 THE COMMISSIONER: No. Whatever
25 is most comfortable for you.

1 MS ROUSSEL: Okay.

2 THE COMMISSIONER: We can move
3 the --

4 MS ROUSSEL: No, this is fine.
5 I'll stay here.

6 THE COMMISSIONER: Can you see
7 from --

8 MS ROUSSEL: Yes, I can. No, this
9 is fine.

10 EXAMINATION

11 MS ROUSSEL: Ms Girvan, you've
12 testified that your level of responsibilities was
13 the same whether you were dealing with a Canadian
14 citizen or landed immigrant.

15 You also stated to Ms Edwardh, if
16 I understand your testimony correctly, that the
17 fact that Mr. Arar might have moved to Tunisia did
18 not influence the level of consular services that
19 you provided to Mr. Arar; is that correct?

20 MS GIRVAN: That's correct,
21 absolutely.

22 MS ROUSSEL: I would also like to
23 bring your attention to Exhibit P-55.

24 MS GIRVAN: Yes.

25 MS ROUSSEL: Now, if we look at

1 this document, which is the information and
2 authorization form, as well as the information
3 that one would need to collect from the detainee,
4 am I correct in suggesting to you that nowhere on
5 this document we refer to residence as one of the
6 criteria but only citizenship?

7 MS GIRVAN: That is the case.

8 MS ROUSSEL: Now, if I draw your
9 attention to Tab 52, and more specifically to the
10 fourth paragraph, Ms Edwardh alluded to the
11 section of the last sentence that deals with the
12 clarification of his residence.

13 Would I be correct in suggesting
14 to you that the clarification of the residence may
15 have come from the Americans or the authorities?

16 If I read the paragraph:

17 "I reassured her as much as
18 possible that there is little
19 likelihood that he would be
20 deported to Syria, given that
21 the authorities know that he
22 is a Cdn, that he travelled
23 on a Cdn ppt, and that the
24 consulate has been involved
25 and has visited with him and

1 clarified his residence."

2 Would I be correct or would it be
3 a possibility that it's the American authorities
4 that are clarifying his residence and not you?

5 MS GIRVAN: That could be. I
6 actually don't understand my writing, exactly what
7 I mean by that.

8 MS ROUSSEL: But it's possible
9 that the clarification was by the Americans?
10 That's what I'm suggesting --

11 MS GIRVAN: That he's from Canada?

12 MS ROUSSEL: That the American
13 authorities are clarifying that he's from Canada?

14 MS GIRVAN: They recognized him as
15 being from Canada, so that is possible.

16 MS ROUSSEL: Okay. Thank you.

17 Now, I would like to bring your
18 attention to Tab 705. Do you have it in front of
19 you?

20 MS GIRVAN: 705 is the information
21 memorandum?

22 MS ROUSSEL: Exactly. I would
23 just like to draw your attention to paragraph 7 of
24 that memo.

25 MS GIRVAN: Yes?

1 MS ROUSSEL: In which, if you see
2 the second sentence of the paragraph:

3 "Ms Girvan first learned of
4 this concern in a phone
5 conversation with Mr. Arar's
6 brother, Taufiq, on October
7 1, 2002, and she quickly
8 sought clarification from the
9 INS New Jersey office."

10 Did you, in fact, have a
11 conversation with Taufik on October 1st, or is
12 that a mistake?

13 MS GIRVAN: I would have to
14 actually check if I did.

15 MS ROUSSEL: Well, if I suggested
16 to you that it was Nancy Collins who spoke to him
17 on October 1st --

18 MS GIRVAN: Oh, I do remember that
19 there was a call from Taufik to Nancy, and that
20 was the one in which he first spoke of the threat
21 of deportation.

22 Is that what this is about? Let's
23 just see. Yes. Yes, in fact, I remember a couple
24 of times being a little confused, when I go
25 through all the notes that are written by me and

1 there is one by Nancy, and that is the one. She
2 is the one who has the conversation with Taufik.

3 MS ROUSSEL: Okay. Thank you.

4 MS GIRVAN: And that's clear on
5 the note.

6 MS ROUSSEL: Now, with respect to
7 the issue of the lawyer being retained, we went
8 through several CAMANT notes over the last few
9 days. I would like to draw your attention -- we
10 referred this morning to Tab 149, but I would also
11 like to refer your attention to Tab 653.

12 MS GIRVAN: I need 149 as well.
13 Thank you. And 149.

14 Six ...

15 MS ROUSSEL: Six fifty-three.

16 MS GIRVAN: I don't have 149, but
17 is that the -- do I need that --

18 MS ROUSSEL: Just for the record,
19 Tab 653 is the interview with the lawyer on CBC.

20 MS GIRVAN: Oh, yes.

21 MS ROUSSEL: If I can draw your
22 attention to page 2?

23 MS EDWARDH: Excuse me, Mr.
24 Commissioner. It's a rough transcript of the
25 interview.

1 THE COMMISSIONER: Thank you.

2 MS ROUSSEL: Page 2?

3 MS GIRVAN: I have it.

4 MS ROUSSEL: And the second
5 paragraph of that interview -- or that page refers
6 to what went on on Monday, the 7th.

7 MS GIRVAN: Yes.

8 MS ROUSSEL: May I suggest to you,
9 if you want to take the time to read it, may I
10 suggest to you that, in fact, this also confirms
11 that Ms Oummih also believed to be retained on
12 that day?

13 MS GIRVAN: Yes, I read this at
14 some earlier point. I'll read it again now.

15 There was going to be some sort of
16 interview or meeting taken at 7 p.m. That's what
17 I remember. I immediately tried to find Mr. Arar.
18 All of this I read only when the CBC came out.
19 The lawyer hadn't told me all these details, but
20 it does to me confirm that she was retained on
21 August -- on October 7th.

22 MS ROUSSEL: And there's nothing
23 in this that would suggest that she was not
24 retained?

25 MS GIRVAN: No, because even when

1 I did speak to her on the 9th, she said she was
2 still looking for him.

3 MS ROUSSEL: Okay. Now, as a
4 consular officer, is it your responsibility to pay
5 for the lawyer?

6 MS GIRVAN: No.

7 MS ROUSSEL: What is your
8 responsibility with respect to the lawyer?

9 MS GIRVAN: With lawyers, my
10 responsibility is to make sure that, if the family
11 asks for a list of lawyers, they can ask for the
12 names of a few lawyers or often, in the case of
13 New York, it would be the referral, lawyer
14 referral list, so that they could get names given
15 to them, or to -- that basically is it.

16 MS ROUSSEL: And is it your
17 responsibility to ensure that the lawyer is
18 retained?

19 MS GIRVAN: No.

20 MS ROUSSEL: And is it your
21 responsibility to ensure proper retainer of the
22 lawyer, to supervise their work?

23 MS GIRVAN: No, I don't know any
24 of the details.

25 MS ROUSSEL: And if I bring your

1 attention to Tabs 44 and 42.

2 MS GIRVAN: Yes, I have 44 -- oh,
3 Note 39?

4 MS ROUSSEL: Yes, Note 39. At
5 Note 44, we see it's 11:31; and Note 42 is, in
6 fact, at 1:13.

7 In your examination by Ms Edwardh,
8 there was a lot of emphasis put on the second
9 paragraph regarding whether or not the lawyer had
10 been retained.

11 The next paragraph deals with
12 providing the number to Constitutional Rights
13 people and advising them -- or advising the family
14 that they should review the charges of any lawyers
15 and the costs that may be incurred.

16 It also says:

17 "Explain pro bono to him."

18 And if I go back to Tab 42, which
19 is a few hours later, and I'm referring to the
20 first paragraph --

21 MS GIRVAN: Yes.

22 MS ROUSSEL: -- which is your
23 discussion with the MDC and having to explain why
24 the Constitutional Rights people are --

25 MS GIRVAN: Calling.

1 MS ROUSSEL: -- calling them. In
2 fact, you've just had a conversation with the
3 family a couple of hours before to --

4 MS GIRVAN: Give them the number
5 for the Constitutional Rights group, yes.

6 MS ROUSSEL: And the reason you
7 did that was why?

8 MS GIRVAN: Because although I
9 believe they're taking Ms Oummih, the
10 Constitutional Rights people have been helpful to
11 other cases and may be able to be helpful to them
12 in the future, and so I'm just making them aware
13 of all the possibilities.

14 I'm also aware that if the case
15 goes on a long time, they may need more help --

16 MS ROUSSEL: So, in fact, you're
17 keeping the door open?

18 MS GIRVAN: Yes, I'm keeping the
19 door open.

20 MS ROUSSEL: There was also a
21 discussion with respect to Tab 11. One of the
22 questions was whether or not you had notified
23 anybody in Washington with respect to the
24 information that you had received on October 1st.

25 I'd like to draw your attention to

1 the second page of that CAMANT note, and we notice
2 in there that Helene Bouchard and Robert
3 Archambault were notified; is that correct?

4 MS GIRVAN: That's correct. In
5 fact, I did copy Washington on this whole message,
6 I see.

7 MS ROUSSEL: And if I bring your
8 attention to Tab 23, we see the next morning --
9 and I'm drawing your attention to the e-mail
10 that's at the bottom of the page, the first
11 e-mail, 8:49.

12 MS GIRVAN: Yes, from myself to
13 Bob Archambault.

14 MS ROUSSEL: Yes. And we see also
15 on the second page, the following page, that Andre
16 Laporte is copied.

17 MS GIRVAN: Yes.

18 MS ROUSSEL: Helen Harris in
19 headquarters, or JP, is copied.

20 MS GIRVAN: Yes.

21 MS ROUSSEL: Helene Bouchard,
22 Brian Schumacher.

23 MS GIRVAN: Who is the Deputy
24 Consul General.

25 MS ROUSSEL: And also Pamela

1 Wallin.

2 MS GIRVAN: Consul General.

3 MS ROUSSEL: As well as JPO Nancy
4 Collins.

5 MS GIRVAN: That's correct.

6 MS ROUSSEL: Those are my
7 questions.

8 THE COMMISSIONER: Thank you, Ms.
9 Roussel.

10 Mr. David?

11 MR. DAVID: I think we have about
12 two hours left?

13 No questions, Mr. Commissioner.

14 --- Laughter / Rires

15 THE COMMISSIONER: All right. He
16 is the witty one. That's why he was hired as
17 Commission counsel, for his sense of humour.

18 Thank you. That completes your
19 evidence, Ms Girvan, and let me express my
20 appreciation to you for the time and effort you
21 obviously put into preparing and coming here two
22 and a half long days. I do appreciate it very
23 much.

24 MS GIRVAN: Thank you very much.

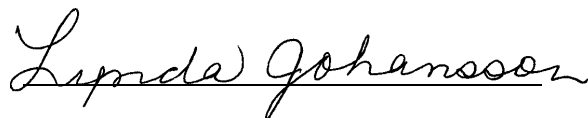
25 THE COMMISSIONER: Then that

1 completes the day's schedule, and we will resume
2 tomorrow morning at ten o'clock.

3 THE REGISTRAR: Please stand.
4 Veuillez-vous lever.

5 --- Whereupon the hearing adjourned at 3:42 p.m.,
6 to resume on Tuesday, May 17, 2005, at
7 10:00 a.m. / L'audience est ajournée à
8 15 h 42, pour reprendre le mardi 17 mai 2005
9 à 10 h 00

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Lynda Johansson,

C.S.R., R.P.R.

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